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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220007-EI

In re: Environmental cost
recovery clause.

_____ /

VOLUME 2

PAGES 182 - 283
HEARING

PROCEEDINGS:

COMMISSIONERS
PARTICIPATING:

CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE:

Thursday, November 17, 2022

TIME:

Commenced: 9:30 a.m.

PLACE:

Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY:

DEBRA R. KRICK
Court Reporter

APPEARANCES:

(As heretofore noted.)

PREMIER REPORTING
112 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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I N D E X

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EXHIBITS

NUMBER:		ID	ADMITTED
1	Comprehensive Exhibit List	185	185
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1 P R O C E E D I N G S

2 (Transcript follows in sequence from Volume
3 1.)

4 CHAIRMAN FAY: Next we will move to exhibits,
5 Mr. Imig.

6 MR. IMIG: Staff has compiled a stipulated
7 comprehensive exhibit list, which includes the
8 prefiled exhibits attached to the witnesses'
9 testimony in this case and a number of staff
10 exhibits. The list has been provided to the
11 parties, the Commissioners and the court reporter.
12 The list is marked as the first hearing exhibit,
13 and the other exhibits should be marked as set
14 forth in the chart.

15 CHAIRMAN FAY: Okay. Great. Show those
16 exhibits marked.

17 (Whereupon, Exhibit Nos. 1-26 were marked for
18 identification.)

19 MR. IMIG: At this time, staff asks that the
20 Comprehensive Exhibit List, marked as Exhibit 1, be
21 entered into the record.

22 CHAIRMAN FAY: Okay. Without objection, show
23 Exhibit 1 entered into the record.

24 (Whereupon, Exhibit No. 1 was received into
25 evidence.)

1 CHAIRMAN FAY: Staff, other exhibits?

2 MR. JONES: Staff asks that Exhibits 2 through
3 6 and 8 through 26 be included into the record.
4 Exhibit 7 will be addressed when FPL Witness
5 MacGregor testifies.

6 CHAIRMAN FAY: Okay. Great. Commissioners,
7 without objection, Exhibits 2 through 6 and 8
8 through 26 entered into the record.

9 (Whereupon, Exhibit Nos. 2-6 & 8-26 were
10 received into evidence.)

11 CHAIRMAN FAY: All right. Next, Mr. Imig,
12 let's go ahead and take up any stipulated issues
13 for the Commission. Just, I guess, clarify which
14 ones we have at this time are stipulated.

15 MR. IMIG: The Type 2 stipulations of Issues 1
16 through 10, 12 and 14 through 17 are in the posture
17 for a bench decision by the Commission.

18 CHAIRMAN FAY: Okay. Great.

19 So, Commissioners, we have 1 through 10, 12,
20 14 and 17. I will take up any questions or
21 discussions on those Type 2 stipulations.

22 MR. REHWINKEL: Mr. Chairman.

23 CHAIRMAN FAY: Yes, Mr. Rehwinkel.

24 MR. REHWINKEL: Before you do that, we had
25 taken a contested posture on 11 and 13. I have not

1 had a chance to discuss this with co-counsel or
2 counsel for FPL, but the Public Counsel is in a
3 position on 13 to facilitate a Type 2 stipulation
4 there. I was going to address that in my closing,
5 but I thought it might be more efficient to let you
6 do that here if -- if it's ripe. I apologize for
7 putting sand in the gears.

8 CHAIRMAN FAY: Yeah. Well, just since we
9 don't have clarity from the other parties on that,
10 what we will do is we will address it when we get
11 to 11 and 13. And I am not discouraging the
12 stipulation, but we will take it up when we get to
13 that part, so thank you for mentioning it.

14 All right. So with that, Commissioners, we
15 have 1 through 10, 12, 14 and 17 as Type 2
16 stipulations. We will take any questions or
17 discussion on those stipulations at this time.

18 With that, we will take a motion on approval
19 of those stipulated issues.

20 COMMISSIONER CLARK: Move the stipulated
21 issues be approved, Mr. Chairman.

22 COMMISSIONER GRAHAM: Second.

23 CHAIRMAN FAY: Okay. We have a motion and a
24 second.

25 All that approve say eye.

1 (Chorus of ayes.)

2 CHAIRMAN FAY: With that, none opposed. Show
3 those stipulated issues approved.

4 Okay. Next we will move to the issues that --
5 well, I guess first, if -- recognizing that if
6 those issues were taken up, if you are a party and
7 you were just specifically participating in those
8 issues, then you are excused from the 07 hearing at
9 this point.

10 With that, we will move to Issues 11 and 13.
11 Staff, do we have any preliminary matters on either
12 of these two issues?

13 MR. IMIG: Would this be the time to take up
14 the Issue 13?

15 CHAIRMAN FAY: Yes, it would be perfect.

16 So with that, what we will do, Mr. Rehwinkel,
17 is we will -- what we will do is we'll go into your
18 opening statement, and then when we make the
19 decisions on it, as long as the parties are clear
20 that the clarification of that stipulation, we will
21 just, at that time, take that up for approval.
22 Brevity might be appreciated if you believe you
23 have already sort of got that issue resolved. But
24 I think what we will do is go ahead and take --
25 take that you after the opening statements

1 presuming you want to provide that, and you can
2 just include it in there.

3 So, Mr. Imig, we will take it after we do the
4 opening statements. Is that okay with --

5 MS. MONCADA: Chairman Fay --

6 CHAIRMAN FAY: Yeah.

7 MS. MONCADA: -- I apologize. It does make
8 since to FPL to take the stipulation, because it
9 might cut 45 seconds or a minute off my opening if
10 I don't have to address Issue 13.

11 CHAIRMAN FAY: I got you. Okay. Well, if
12 it's for efficiency purposes --

13 MS. MONCADA: For efficiency, yes.

14 CHAIRMAN FAY: -- and you feel comfortable --
15 is there a stipulated language that Mr. Imig would
16 have or anything that we can clarify for the record
17 just to make sure he has what he needs, Mr.
18 Rehwinkel?

19 MR. REHWINKEL: Well, our -- our position
20 would be we would take no position, and so I think
21 the company's --

22 CHAIRMAN FAY: Got you.

23 MR. REHWINKEL: -- position would prevail.

24 CHAIRMAN FAY: Perfect. Okay. So that would
25 resolve that issue.

1 We still, since it wasn't in the stipulated,
2 we would still go ahead and vote on that. So
3 let -- before we resolve that, we will resolve that
4 and then go to opening statements if you have that
5 on -- Issue 11 is still in play, correct?

6 MR. REHWINKEL: Yes.

7 CHAIRMAN FAY: Okay. Great.

8 Yes?

9 MS. CUELLO: Hi, can I get a clarification?
10 When the motion was made to vote on the stipulated
11 issues, was it 14 through 17 or 14 and 18 -- 14 and
12 17?

13 MR. IMIG: Through.

14 CHAIRMAN FAY: Through 17.

15 MS. CUELLO: Thank you.

16 CHAIRMAN FAY: Yep. Sure.

17 All right. Okay. With that, then -- so OPC
18 has taken no position, Commissioners, on Issue 13,
19 and so we have the utility's position in front of
20 us. And so assuming that the Commission approves
21 that position --

22 Let me make sure, Mary Anne, I am just going
23 to take a motion on this now and we can go ahead
24 and resolve that issue before we go to opening
25 statements?

1 MS. HELTON: I think that makes a lot of
2 sense, Mr. Chairman.

3 CHAIRMAN FAY: Okay. Great.

4 So then I would look for approval of issue --
5 the position of the utility on Issue 13, as OPC has
6 taken no position on that item. Do we have a
7 motion?

8 COMMISSIONER CLARK: 13 or 11?

9 MR. REHWINKEL: Commissioner, just -- just to
10 be clear --

11 CHAIRMAN FAY: Yep. Go ahead.

12 MR. REHWINKEL: -- there are other parties who
13 have agreed with us. It probably would be, for the
14 record, appropriate to make sure that they are in
15 the same posture.

16 CHAIRMAN FAY: That's fair. I presume, since
17 they didn't speak up, that they are comfortable
18 with you taking no position, but let me double
19 check with Duke and TECO. Do you have any issues
20 with that Issue 13 stipulation now that OPC has
21 taken no position? Great. Okay.

22 MR. MOYLE: FIPUG is fine too.

23 CHAIRMAN FAY: Okay. Anybody else?

24 All right. With that, we will take a motion
25 for approval on the utility's positions on Issue 13

1 as stated.

2 COMMISSIONER CLARK: Move to approve the
3 stipulation, Mr. Chairman.

4 COMMISSIONER GRAHAM: Second.

5 CHAIRMAN FAY: Okay. I have a motion and a
6 second.

7 All that approve say aye.

8 (Chorus of ayes.)

9 CHAIRMAN FAY: None opposed. With that, show
10 Issue 13 approved.

11 Next we will move into opening statements,
12 which are now one-minute shorter, which would be
13 great. So we'll -- yeah, I knew you would like
14 that, Commissioner Graham.

15 So we will take up three minutes as stated in
16 the prehearing for the opening statements. And I
17 have FPL, OPC and FIPUG, to make sure I have the
18 right parties for opening statements.

19 All right. I guess do the parties want to
20 provide opening statements or waive?

21 MS. MONCADA: FPL will provide a brief
22 statement.

23 CHAIRMAN FAY: Okay. Great. We will move to
24 opening statements.

25 FPL, you are recognized.

1 MS. MONCADA: Thank you, Mr. Chairman. Good
2 morning, again, Mr. Chairman and Commissioners.

3 The majority of FPL's environmental cost
4 recovery issues are the subject of stipulation, and
5 the only remaining issue to be litigated before you
6 this morning is FPL's request for approval of a new
7 project. That new project is called the Combustion
8 Turbine National Emission Standards for Hazardous
9 Air Pollutants Projects, or the CT NESHAP Project
10 for short.

11 On March 9th of this year, the Environmental
12 Protection Agency lifted the stay of a new emission
13 standard for certain gas-fired turbines. Under the
14 new regulation, FPL is required to perform stack
15 testing to determine whether affected facilities
16 meet a prescribed formaldehyde emissions limit. If
17 an affected unit exceeds the formaldehyde limit,
18 FPL would be required to install pollution control
19 equipment in order to achieve compliance.

20 Earlier this year you considered and approved
21 a similar project for Tampa Electric Company based
22 on the same NESHAP rule. At this time, FPL
23 believes that all of its affected units satisfied
24 the formaldehyde limits, and the company will,
25 therefore, avoid the need to install any pollution

1 control equipment. This project meets the
2 requirements for approval as an ECRC project.

3 As to this project, the activities are legally
4 required to comply with a governmentally imposed
5 environmental regulation enacted after FPL prepared
6 its last rate case test year. And secondly, the
7 costs are not recovered through some other cost
8 recovery mechanism or through base rates.

9 Accordingly, this project should be approved
10 as eligible for ECRC recovery with the costs being
11 subject to review by this commission for
12 reasonableness and prudence.

13 This concludes my opening. Thank you.

14 CHAIRMAN FAY: Okay. Great. Thank you.

15 Office of Public Counsel, you are next
16 recognized.

17 MR. REHWINKEL: Yes. Mr. Chairman, I can
18 defer my opening to what I hope to make as a
19 closing argument. The only issue that we have with
20 this project is whether the Commission is in a
21 posture to approve capital costs, which we believe
22 are not at issue here. I will -- I will defer that
23 time to the closing.

24 CHAIRMAN FAY: Okay. Great. And we will --
25 Mr. Rehwinkel, we will just accept that as your

1 opening statement. We presume we might be in the
2 posture to have closing arguments, but since we
3 haven't made that decision yet, I can't
4 preemptively sort of allocate that, but you are
5 comfortable with what you provided for your
6 opening?

7 MR. REHWINKEL: Yes, sir.

8 CHAIRMAN FAY: Okay. Great.

9 Next we will move to FIPUG.

10 MR. MOYLE: Thanks.

11 Just a brief statement with respect to the
12 issue before you as I understand it, which is as
13 you heard from counsel for FPL, you know, they
14 referenced the last rate case filing, and said this
15 was not something that was part of that rate case
16 filing. So it's a new environmental cost.

17 It doesn't seem that -- that it's appropriate
18 for you today to allow them to recover capital
19 costs that Public Counsel says they are just not in
20 the record. I mean, we are in a ratemaking
21 proceeding. It's a clause ratemaking proceeding,
22 but before the Commission should be concrete
23 evidence about those costs. Just like in a rate
24 case, people incur costs and then come in and file
25 and say, here are the costs that we incurred, we

1 speak the truth, the whole truth, and nothing but the
2 truth, was examined and testified as follows:

3 THE WITNESS: I do.

4 CHAIRMAN FAY: Great. Thank you.

5 All right. Ms. Moncada, your witness.

6 MS. MONCADA: Thank you.

7 EXAMINATION

8 BY MS. MONCADA:

9 Q You have just been sworn, yes, Ms. MacGregor?

10 A I have.

11 Q Would you please state your full name and
12 business address?

13 A Katharine MacGregor, 700 Universe Boulevard,
14 Juno Beach Florida, 33408.

15 Q By whom are you employed and in what capacity?

16 A I am employed by Florida Power & Light. I am
17 the Vice-President of Environmental Services.

18 Q Did you prepare and cause to be filed 14 pages
19 of direct testimony on April 1st, 2022?

20 A Yes.

21 Q And 17 pages of direct testimony on July 29th,
22 2022?

23 A Yes.

24 Q And two pages of direct testimony on August
25 26th, 2022?

1 A Yes.

2 Q If I asked you the same questions contained in
3 your direct testimony, would your answers be the same?

4 A They would.

5 Q Do you have any changes to your prefiled
6 testimony?

7 A I do not.

8 MS. MONCADA: Mr. Chairman, I ask that Ms.
9 MacGregor's prefiled direct testimony be inserted
10 into the record as though read.

11 CHAIRMAN FAY: Okay. Without objection, show
12 it inserted as though read.

13 MS. MONCADA: Thank you.

14 (Whereupon, prefiled direct testimony of
15 Katharine MacGregor was inserted.)

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF KATHARINE MACGREGOR**

4 **DOCKET NO. 20220007- EI**

5 **APRIL 1, 2022**

6

7 **Q. Please state your name and address.**

8 A. My name is Katharine MacGregor and my business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

10 **Q. By whom are you employed and in what capacity?**

11 A. I am employed by Florida Power & Light Company (“FPL” or “Company”) as Vice
12 President of Environmental Services.

13 **Q. Please describe your educational background and professional experience.**

14 A. I received a Bachelor of Arts in American History and Classical Studies from the
15 University of Pennsylvania in 2004. I was employed by the United States House of
16 Representatives from 2007 to 2017, serving as Professional Staff on the House
17 Committee on Natural Resources from 2011 to 2017. I was employed by the
18 Department of the Interior from 2017 to 2021 in multiple roles, including the
19 Principal Deputy Assistant Secretary for Land and Mineral Management and later
20 as the Deputy Secretary for the Department. I have been employed by FPL since
21 2021 as the Vice President of Environmental Services. In that role, I am responsible
22 for FPL’s environmental licensing and compliance efforts for the Company.

1 **Q. What is the purpose of your testimony in this proceeding?**

2 A. The purpose of my testimony is to present for Commission review and approval
3 FPL's request for recovery through the Environmental Cost Recovery Clause
4 ("ECRC") of a new project, the Combustion Turbine National Emission Standards
5 for Hazardous Air Pollutants Project ("CT NESHAP Project"). My testimony also
6 explains the significant variances in costs associated with operation & maintenance
7 ("O&M") expenses and capital investments included in pre-consolidated FPL and
8 pre-consolidated Gulf Power Company's ("Gulf") ECRC Final True-ups for the
9 period of January 2021 through December 2021.

10

11

CT NESHAP Project

12 **Q. Please briefly describe FPL's proposed CT NESHAP Project.**

13 A. The United States Environmental Protection Agency's ("EPA") final amendment
14 to the National Emission Standard for Hazardous Air Pollutants ("NESHAP")
15 requires that certain combustion turbines must meet emission standards for
16 formaldehyde emissions established under the rule. FPL must conduct initial, and
17 subsequent annual, stack testing of affected units. If any affected unit does not meet
18 the emission standard for formaldehyde, FPL must install an oxidation catalyst to
19 reduce those emissions to meet the standard.

20 **Q. Please describe the environmental law or regulation requiring the CT**
21 **NESHAP Project.**

22 A. Pursuant to Section 112 of the Clean Air Act, the EPA identified stationary
23 combustion turbines as major sources of hazardous air pollutants, such as

1 formaldehyde. In March 2004, the EPA promulgated the NESHAP for stationary
2 combustion turbines and during the rulemaking process, the EPA received a
3 petition to de-list gas-fired and low-risk turbine subcategories under section 112 of
4 the Clean Air Act.

5
6 On April 7, 2004, the EPA proposed to stay the effectiveness of the NESHAP for
7 new lean premix gas-fired and diffusion flame gas-fired turbines to “avoid wasteful
8 and unwarranted expenditures on installation of emission controls which will not
9 be required if the subcategories are delisted.” (69 FR 18338; April 7, 2004) The
10 standards for new oil-fired turbines were not stayed and are currently in effect. On
11 August 18, 2004, the EPA stated that it would lift the stay if the subcategories were
12 not ultimately delisted, and that turbines constructed or reconstructed after January
13 14, 2003 would then be subject to the final standards. The EPA also explained that
14 those turbines would be given the same time to demonstrate compliance as they
15 would have if there had been no stay. The stay remained in place until March of
16 this year.

17
18 On March 9, 2022, the EPA published in the Federal Register, at 87 Fed. Reg.
19 13,183, a final rule to amend the NESHAP for Stationary Combustion Turbines
20 (“Final Rule”) at 40 C.F.R. Subpart YYYY stating that it was taking final action to
21 remove the stay of the standards for new lean premix and diffusion flame gas-fired
22 turbines.

1 **Q. Please describe the activities related to the CT NESHAP Project FPL is**
2 **required to undertake.**

3 A. FPL must conduct emission stack testing within 180 days of the March 9, 2022
4 publication date and is required to demonstrate compliance no later than September
5 5, 2022. FPL is then required to conduct annual emission testing to demonstrate
6 continued compliance with the NESHAP. If a combustion turbine does not meet
7 the NESHAP, FPL must install pollution control equipment to reduce emissions
8 and conduct emission testing to demonstrate continued compliance with the
9 NESHAP. Based on today's technology, the pollution control equipment would
10 likely be an oxidation catalyst.

11

12 The EPA has identified 32 combustion turbines as affected units for FPL. As a
13 result of construction commencement activities conducted by FPL during the
14 construction of Manatee Unit 3 and Martin Unit 8 combined cycle units prior to the
15 January 15, 2003 date, FPL believes that those combustion turbines are not subject
16 to the rule requirements and should be removed from the list. FPL will pursue their
17 removal from the affected unit list with the compliance authority but will continue
18 to include those units unless and until the authority removes them.

19 **Q. What is the estimated O&M expense associated with the proposed CT**
20 **NESHAP Project that FPL is requesting to recover through the ECRC?**

21 A. Based on cost information provided by vendors regarding emissions testing using
22 test methodologies approved by the EPA with sufficient detection limits, FPL is
23 projecting an initial and continued annual compliance cost of \$380,000 for the

1 required emission stack testing. FPL expects to begin testing in April 2022, after
2 the filing of this petition.

3 **Q. What are the main drivers of O&M expenses for the CT NESHAP Project?**

4 A. FPL's projected costs are for contractor expenses related to emission stack testing
5 of the 32 units that fall within the EPA's NESHAP criteria, which are Dania Beach
6 7 A-B, Fort Myers 3 C-D, Gulf Clean Energy Center 8 A-D, Lauderdale 6 A-E,
7 Martin 8 C-D, Manatee 3 A-D, Turkey Point 5 A-D, West County 1 A-C, West
8 County 2 A-C, and West County 3 A-C.

9 **Q. Does FPL expect to incur any capital costs associated with the proposed CT
10 NESHAP Project?**

11 A. FPL has not included any projected capital costs at this time. FPL believes that its
12 combustion turbines can meet the NESHAP, avoiding the requirement to install
13 capital equipment. However, should an affected unit demonstrate that it does not
14 achieve the emission standard, FPL must retest and, if the unit's emissions continue
15 to exceed the standard, pollution control equipment must be installed. If that
16 occurs, FPL will update its projected capital costs for this proposed Project.

17 **Q. Please describe the measures FPL is taking to ensure that costs of the CT
18 NESHAP Project are reasonable and prudently incurred.**

19 A. FPL will competitively bid the procurement of materials and services. FPL benefits
20 from strong market presence allowing it to leverage corporate-wide procurement
21 activities to the specific benefit of individual procurement activities.

1 **Q. Did FPL anticipate that it would need to perform these activities at the time**
2 **that it prepared the Minimum Filing Requirements (“MFR”) for its 2021 rate**
3 **case?**

4 A. No.

5 **Q. Is FPL recovering through any other mechanism the costs for the CT**
6 **NESHAP Project for which it is petitioning for ECRC recovery?**

7 A. No.

8

9

FPL Variance Explanations

10 **Q. How did FPL’s actual project O&M and capital revenue requirements for**
11 **January 2021 through December 2021 compare with actual/estimated**
12 **amounts presented in Docket No. 20210007-EI?**

13 A. Form 42-4A shows that the variance in total actual project O&M was \$3,463,403
14 or 13.0% lower than projected, and Form 42-6A shows that the variance in total
15 actual revenue requirements associated with the project capital investments
16 (depreciation, amortization, income taxes and return on capital investments) were
17 \$674,734 or 0.4% lower than projected. Individual project variances are provided
18 on Forms 42-4A and 42-6A. Actual revenue requirements for each capital project
19 for the period January 2021 through December 2021 are provided on Form 42-8A,
20 pages 15 through 70. The calculation of actual revenue requirements is sponsored
21 by FPL witness Renae B. Deaton.

22

1 **Q. Please explain the reasons for the significant variances in project O&M**
2 **expenses and capital revenue requirements.**

3 A. The significant variances in FPL's 2021 actual O&M expenses and capital revenue
4 requirements from actual/estimated amounts are associated with the following
5 projects.

6

7

FPL O&M Variance Explanations

8

Project 5a. Maintenance of Stationary Above Ground Fuel Storage Tanks

9

Project expenditures were \$135,030, or 54.0% lower than projected. The variance
10 is primarily due to the cancellation of scheduled tank repainting and repair work at
11 Manatee Plant and Port Manatee.

12

13

Project 19a. Substation Pollutant Discharge Prevention & Removal -

14

Distribution

15

Project expenditures were \$849,478 or 25.2% lower than projected. The variance
16 is primarily due to delays in obtaining equipment clearances (i.e., ability to de-
17 energize equipment) required for equipment repair, which resulted in a lower than
18 projected number of transformers being repaired during 2021.

19

20

Project 19b. Substation Pollutant Discharge Prevention & Removal -

21

Transmission

22

Project expenditures were \$359,805 or 26.7% lower than projected. The variance
23 is primarily due to delays in obtaining equipment clearances (i.e., ability to de-

1 energize equipment) required for equipment repair, which resulted in a lower than
2 projected number of transformers being repaired during 2021.

3
4 **Project 21. St. Lucie Turtle Nets**

5 Project expenditures were \$79,651 or 24.2% higher than projected. The variance is
6 primarily due to higher than projected costs associated with inspections and net
7 cleaning work resulting from higher than anticipated amounts of algae at the St.
8 Lucie Plant. The higher amounts of algae required the implementation of new
9 protocols for more frequent cleaning and quicker response to high net loading to
10 reduce potential sea turtle injury or mortality.

11
12 **Project 23. Spill Prevention, Control and Countermeasures (“SPCC”)**

13 Project expenditures were \$108,323 or 14.5% higher than projected. The variance
14 is primarily due to unplanned repairs and upgrades of deteriorated and damaged oil
15 diversionary structures at various FPL facilities.

16
17 **Project 31. Clean Air Interstate Rule (“CAIR”) Compliance**

18 Project expenditures were \$811,970 or 20.6% higher than projected. The variance
19 is primarily due to higher than projected Scherer Unit 4 scrubber expenses due to
20 increased limestone consumption resulting from higher generation output than
21 expected. Increased generation at Scherer Unit 4 was primarily driven by increases
22 in natural gas prices creating a more favorable economic dispatch for coal.

1 **Project 33. Mercury and Air Toxics Standards (“MATS”)**

2 Project expenditures were \$288,887 or 17.9% lower than projected. The variance
3 is primarily due to lower than projected purchases of powdered activated carbon
4 for use in the Scherer 4 baghouse due to the planned unit retirement.

5

6 **Project 37. DeSoto Next Generation Solar Energy Center**

7 Project expenditures were \$231,834, or 59.7% higher than previously projected.
8 The variance is primarily due to work performed on the plant’s PV trackers that
9 was originally budgeted as capital but was later determined to be an O&M expense.
10 Additional variances are related to unexpected work that transpired the second half
11 of the year, which included a fire within a switchgear component and unplanned
12 maintenance required on an inverter.

13

14 **Project 38. Space Coast Next Generation Solar Energy Center**

15 Project expenditures were \$70,283 or 27.1% lower than previously projected. The
16 variance is primarily due to lower than projected maintenance activities required in
17 2021. Preventative measures implemented in 2020, such as increased direct current
18 field work and upstream engineering oversight were successful at reducing cost for
19 maintenance activities expected in 2021.

20

21 **Project 41 – Manatee Temporary Heating System**

22 Project expenditures were \$63,670 or 39.2% higher than previously projected. The
23 variance is primarily due to costs associated with unexpected replacement of the air

1 conditioning units for the switch gear components of the manatee heaters at Cape
2 Canaveral Energy Center. Additionally, costs associated with required biological
3 monitoring at Dania Beach Energy Center were higher than projected.

4
5 **Project 42. Turkey Point Cooling Canal Monitoring Plan**

6 Project expenditures were \$2,863,860, or 35.1%, lower than previously
7 projected. The variance is primarily due to moving the Industrial Wastewater
8 permit litigation expenditures from ECRC to base rates and reduced contractor
9 costs. In addition, a number of activities will be completed in 2022 rather than
10 2021 primarily because of delays in the delivery of materials.

11
12 **FPL Capital Variance Explanations**

13 **Project 47. National Pollutant Discharge Elimination System (“NPDES”)**
14 **Permit Renewal Requirements**

15 Project revenue requirements were \$83,534, or 22.6% lower than previously
16 projected. The variance is primarily due to a delay in putting the permanent chlorine
17 dioxide system into service at the St. Lucie Nuclear Plant. This delay resulted from
18 certain supplies not being delivered on time, due to supply chain disruptions.

19
20 **Gulf Variance Explanations**

21 **Q. How did Gulf’s actual project O&M and capital revenue requirements for**
22 **January 2021 through December 2021 compare with actual/estimated**
23 **amounts as presented in Docket No. 20210007-EI?**

1 A. Form 42-4A shows that the variance in total actual project O&M was \$10,011,354
2 or 33.5% lower than projected, and Form 42-6A shows that the variance in total
3 actual revenue requirements associated with the project capital investments (return
4 on capital investments, depreciation, amortization, and income taxes) was
5 \$1,744,271 or 1.3% lower than projected. Individual project variances are provided
6 on Forms 42-4A and 42-6A. Actual revenue requirements for each capital project
7 for the period January 2021 through December 2021 are provided on Form 42-8A,
8 pages 12 through 51. The calculation of actual revenue requirements is sponsored
9 by FPL witness Renae B. Deaton.

10 **Q. Please explain the reasons for the significant variances in project O&M**
11 **expenses and capital revenue requirements.**

12 A. The significant variances in Gulf's 2021 actual O&M expenses and capital revenue
13 requirements from actual/estimated amounts are associated with the following
14 projects.

15

16 **Gulf O&M Variance Explanations**

17 **Project 6. General Water Quality**

18 Project expenditures were \$220,303 or 17.0% lower than projected. The variance
19 is primarily due to lower than projected costs associated with the Plant Smith and
20 Plant Scholz industrial wastewater permit renewals, substation stormwater
21 maintenance, and Plant Daniel groundwater monitoring.

22

23

1 **Project 10. Environmental Auditing and Assessment**

2 Project expenditures were \$44,572 or 117.2% lower than previously projected. The
3 variance is primarily due to deferring the northwest region audits scheduled for
4 fourth quarter 2021 to the first half of 2022. The variance also includes a credit for
5 an accrual reversal for annual fleet fuel tank inspections.

6

7 **Project 20. Air Quality Compliance Program**

8 Project expenditures were \$9,734,875 or 43.4% lower than projected. The variance
9 is primarily due to delays associated with terminating the limestone supply contract
10 and associated payment for the Gulf Clean Energy Center (“GCEC”). The payment
11 was initially projected to be booked in 2021 but is now expected to occur in 2022.
12 Limestone is no longer utilized at the facility since the scrubber was retired with
13 the plant’s coal generation assets in October 2020.

14

15 **Project 23. Coal Combustion Residuals (CCR)**

16 Project expenditures were \$420,947 or 30.1% lower than projected. The variance
17 is primarily due to lower than projected costs for CCR compliance activities at Plant
18 Smith and GCEC. Plant Smith CCR costs were deferred to 2022 due to changes in
19 the pond closure schedule. Additionally, costs associated with preparation of the
20 required five-year CCR compliance reports for GCEC and Plant Smith were lower
21 than projected due to the utilization of stormwater modeling and geotechnical
22 information that was previously compiled for other purposes.

23

1 **Project 24. Smith Water Conservation**

2 Project expenditures were \$471,476 or 472.6% higher than projected. The variance
3 is primarily due to the transfer of Smith reclaimed water project engineering and
4 design costs from capital Project 17 to the associated O&M Project 24 when the
5 Smith underground injection control (“UIC”) wastewater treatment system capital
6 project was cancelled. The now-cancelled capital project (included under Project
7 17) would have allowed Plant Smith to utilize reclaimed water in lieu of existing
8 saltwater cooling water withdrawn from North Bay as a means to comply with a
9 requirement to utilize reclaimed water if it was available. After significant review,
10 FPL determined that the reclaimed water project would not be a beneficial
11 opportunity for Plant Smith. Among other reasons, FPL determined that (i) the
12 existing non potable saltwater supply for the Plant is the lowest quality of water
13 available as compared to the blend of potable water and reclaim water available
14 from Bay County and (ii) additional O&M cost would be required to utilize
15 reclaimed water as compared to the continued use of the saltwater cooling water
16 supply.

17

18 **Project 27. Emission Allowances**

19 Project expenditures were \$56,198 or 36.8% higher than projected. The variance
20 is primarily due to the purchase in December 2021 of NOx ozone allowances for
21 Plant Daniel to cover 2021 emissions.

22

23

1

Gulf Capital Variance Explanations

2

Project 27. General Water Quality

3

Project revenue requirements were \$181,394 or 17.5% lower than projected. The

4

variance is primarily due to lower than projected costs for the GCEC Closed Ash

5

Landfill improvement project during the second half of 2021. Costs originally

6

scheduled for 2021 were deferred to 2022 due to schedule delays associated with a

7

design change which required additional material procurement and permitting.

8

Q. Does this conclude your testimony?

9

A. Yes.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF KATHARINE MACGREGOR**

4 **DOCKET NO. 20220007- EI**

5 **JULY 29, 2022**

6

7 **Q. Please state your name and address.**

8 A. My name is Katharine MacGregor and my business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

10 **Q. By whom are you employed and in what capacity?**

11 A. I am employed by Florida Power & Light Company (“FPL” or “Company”) as Vice
12 President of Environmental Services.

13 **Q. Have you previously testified in this proceeding?**

14 A. Yes.

15 **Q. What is the purpose of your testimony in this proceeding?**

16 A. The purpose of my testimony is to present for Commission review and approval
17 FPL’s request for the modification of an existing Environmental Cost Recovery
18 Clause (“ECRC”) approved project, the National Pollutant Discharge Elimination
19 System (“NPDES”) Permit Renewal Requirements Project (“NPDES Project”).
20 My testimony also explains the significant variances in costs associated with
21 operation & maintenance (“O&M”) expenses and capital investments included in
22 FPL’s ECRC actual/estimated true-up for the period of January 2022 through
23 December 2022.

1 **Q. Are you sponsoring any exhibits in this proceeding?**

2 A. Yes, I am sponsoring the following exhibit:

- 3 • KM-1 – NPDES Permit No. FL0001562

4

5 **National Pollutant Discharge Elimination System Permit Renewal**

6 **Requirements Project Modification**

7 **Q. Please describe FPL's approved NPDES Permit Renewal Requirements**
8 **Project.**

9 A. The Florida Department of Environmental Protection ("FDEP") issues NPDES
10 permits pursuant to a delegation from the U.S. Environmental Protection Agency
11 ("EPA"). Affected facilities are required to obtain initial NPDES permits and
12 subsequently apply for renewal of the five-year duration permits prior to their
13 expiration.

14

15 By Order No. PSC-2011-0553-FOF-EI issued in Docket No. 20110007-EI on
16 December 7, 2011, the Commission approved FPL's NPDES Project to recover
17 costs associated with new requirements for whole effluent toxicity monitoring and
18 reporting, as well as for preparing Storm Water Pollution Prevention Plans
19 ("SWPPP") that were contained in the then-latest renewals for FPL's NPDES
20 permits. FPL's testimony in Docket No. 2011007-EI noted that the NPDES Project
21 would apply to all of FPL's plants, with the exception of the Turkey Point and West
22 County plants.

1 **Q. Please briefly describe FPL’s proposed modification of the NPDES Permit**
2 **Renewal Requirements Project.**

3 A. FPL is proposing to modify the NPDES Project to include the Turkey Point Power
4 Plant. On May 10, 2022, the FDEP issued NPDES Permit Renewal No. FL0001562
5 (“Permit”) to FPL for the Turkey Point Power Plant. The Permit includes a new
6 condition related to the development and implementation of a Best Management
7 Practices Plan (“BMP Plan”), which FPL is now required to develop within a
8 specified timeframe. The Permit also includes new requirements for impoundment
9 inspections. The Permit is attached to this testimony as Exhibit KM-1.

10 **Q. Please describe the law or regulation requiring the NPDES Permit Renewal**
11 **Requirements Project.**

12 A. The majority of FPL’s power plants are subject to the Federal Clean Water Act’s
13 (“CWA”) NPDES program (33 § U.S.C. 1342). Pursuant to the EPA’s approved
14 delegation of authority, the FDEP implements the NPDES permitting program in
15 Florida. The CWA requires NPDES permits to be periodically renewed (33
16 § U.S.C. 1342). As referenced above, the FDEP issued a renewed Permit to the
17 Turkey Point Power Plant on May 10, 2022.

18 **Q. Please describe the activities related to the NPDES Project FPL is required to**
19 **undertake.**

20 A. Pursuant to Section VII of the Permit, FPL must develop a BMP Plan for the Turkey
21 Point facilities. The BMP Plan expands the SWPPP by including industrial
22 wastewater, stormwater, and waste minimization components and requirements to
23 identify areas for improvement. Pursuant to Section VI of the Permit, FPL must

1 develop the BMP Plan within 18 months of the effective date of the FDEP permit,
2 which is May 10, 2022. FPL is required to implement the developed BMP Plan
3 within 30 months of the effective date of the FDEP Permit and submit a summary
4 of the plan three years following the effective date of the Permit. Additionally,
5 pursuant to Section VIII, Part F of the Permit, FPL must comply with new
6 impoundment inspection requirements for the periphery of the cooling canal
7 system.

8 **Q. What is the estimated O&M expense associated with the proposed**
9 **modification to the approved NPDES Project that FPL is requesting to recover**
10 **through the ECRC?**

11 A. The estimated O&M costs for 2022 associated with developing the BMP Plan for
12 the Turkey Point plant is \$87,000.

13 **Q. Has FPL included capital costs associated with the proposed modification to**
14 **the NPDES Project?**

15 A. No, FPL has not included any projected capital costs at this time.

16 **Q. Could additional activities be required under an NPDES Permit?**

17 A. Other activities may be required in the future under this Permit or FPL's other
18 NPDES permits, including incurrence of capital costs to implement the BMP Plan.
19 New activities may also be required as a result of permit modifications or renewals.

20 **Q. Please describe the measures FPL is taking to ensure that costs of the NPDES**
21 **Project are reasonable and prudently incurred.**

22 A. In general, FPL competitively bids the procurement of materials and services. FPL
23 benefits from strong market presence allowing it to leverage corporate-wide

1 procurement activities to the specific benefit of individual procurement activities.
2 However, consistent with applicable policies and procedures, single or sole source
3 procurement also may be used. Here, FPL's estimate for the costs associated with
4 this requested modification were based on the lowest qualifying bid received in
5 response to a request for proposals.

6 **Q. Did FPL anticipate that it would need to perform these activities at the time**
7 **that it prepared the Minimum Filing Requirements for its 2021 rate case?**

8 A. No.

9 **Q. Is FPL recovering through any other mechanism the costs for the NPDES**
10 **Project for which it is petitioning for ECRC recovery?**

11 A. No.

12 **Q. Does FPL anticipate receiving any other NPDES permit renewals in the near**
13 **future?**

14 A. Yes. FPL anticipates that NPDES permits for several of its facilities will be
15 renewed in the next few years. Currently, nine facilities have NPDES permits that
16 are pending with the FDEP, and it is expected permit renewals will be issued in
17 2022, 2023, and 2024. These facilities are already included in the NPDES Project.
18 The FDEP could require new activities under the renewed permits. FPL will update
19 its projected O&M expenses and capital costs for the NPDES Project when these
20 permits are issued, if necessary.

21

Variance Explanations

1

2 **Q. How do the actual/estimated project O&M and capital revenue requirements**
3 **for January 2022 through December 2022 compare with original projections**
4 **for the same period?**

5 A. Form 42-4E shows that the variance in total actual project O&M was \$15.7 million
6 or 36.1% higher than projected, and Form 42-6E shows that the variance in total
7 actual revenue requirements associated with the project capital investments
8 (depreciation, amortization, income taxes and return on capital investments) were
9 \$6.5 million or 1.9% lower than projected. Individual project variances are
10 provided on Forms 42-4A and 42-6A. Actual revenue requirements for each capital
11 project for the period January 2022 through December 2022 are provided on Form
12 42-8E, pages 15 through 88. The calculation of actual revenue requirements is
13 sponsored by FPL witness Renae B. Deaton.

14 **Q. Please explain the reasons for the significant variances in project O&M**
15 **expenses and capital revenue requirements.**

16 A. The significant variances in FPL's 2022 actual/estimated O&M expenses and
17 capital revenue requirements from original projections are associated with the
18 following projects.

19

20

O&M Variance Explanations

Project 1. Air Operating Permit Fees

Project expenditures are estimated to be \$100,589 or 28.8% lower than projected. The variance is primarily due to 2021 actual generation being less than projected for the Gulf Clean Energy Center (“GCEC”), and partially offset by greater than projected generation at the Smith, Pea Ridge and Perdido plants. Fees are paid in arrears, i.e., the year after emissions occur. Emissions from generation of a unit is the driver of the actual calculations of fee forecast and payments.

Project 5. Maintenance of Stationary Above Ground Fuel Tanks

Project expenditures are estimated to be \$745,516 or 262.6% higher than projected. The variance is primarily due to accelerating the removal and replacement of the coating system on Tank Nos. 2 and 3 at Lauderdale Plant from 2024-2025 into 2022. The Lauderdale project costs were partially offset by a reduction in costs for Northwest region tank compliance support.

Project 11. Air Quality Compliance

Project expenditures are estimated to be \$12,755,547 or 158.3% higher than projected. The variance is primarily due to delays associated with terminating the limestone supply contract and associated termination fee for the GCEC, which will result in overall customer savings. As discussed in the final true-up filing, the termination fee was initially projected to be booked in 2021 but occurred in June 2022 when the contract was terminated. Limestone is no longer utilized at the

1 facility since the scrubber was retired with the plant's coal generation assets in
2 October 2020. Additionally, FPL incurred higher than expected limestone
3 inventory expenses associated with retirement of FPL's common ownership of
4 Scherer 4 and a final payment for the replacement of Scherer 4 Desulphurization
5 booster fan.

6
7 **Project 23. Spill Prevention, Control & Countermeasures ("SPCC")**

8 Project expenditures are estimated to be \$104,756 or 12.2% higher than estimated.
9 The variance is primarily due to moving costs associated with the former Gulf
10 Power Substation and Service Center SPCC plans to the FPL line item. Gulf's
11 SPCC costs for these facilities were previously included under the General Solid
12 and Hazardous Waste Line Item, Project 430. Project 430 has been reduced to
13 offset costs added to the SPCC Line Item, Project 23.

14
15 **Project 27. Lowest Quality Water Source**

16 Project expenditures are estimated to be \$78,149 or 36.6% higher than projected.
17 The variance is primarily due to costs associated with completing installation of the
18 new GCEC cooling tower chemical tanks that were originally scheduled in 2021
19 and now scheduled in 2022. The chemical tanks are needed to treat reclaimed water
20 utilized in the cooling tower.

21
22 **Project 38. Space Coast Next Generation Solar Energy Center**

23 Project expenditures are estimated to be \$112,020 or 39.5% lower than projected.

1 The variance is primarily due to the regionalization of the engineers, which resulted
2 in more efficient site staffing and reduced need for third party contractors.

3

4 **Project 42. Turkey Point Cooling Canal Monitoring Plan**

5 Project expenditures are estimated to be \$1,500,999 or 15.0% lower than projected.

6 The variance is primarily due to lower than anticipated vendor costs for water
7 quality monitoring and cooling canal sediment management.

8

9 **Project 50. Steam Electric Effluent Guidelines Revised Rules**

10 Project expenditures are estimated to be \$1,005,882 or 48.2% lower than projected.

11 The variance is primarily due to the extension of Plant Scherer's compliance date
12 for Effluent Limitation Guidelines. The original forecast assumed that Plant
13 Scherer would utilize bio-phys-chem technology in order to be compliant with the
14 Effluent Limitation Guidelines by 2025. However, in October 2021, Georgia
15 Power Company filed its Notice of Planned Participation ("NOPP") in the
16 Voluntary Incentives Program ("VIP"), which extends the compliance date to 2028.
17 This decision extended the project time horizon and both the amount and the timing
18 of expected cash flows.

19

20 **Project 54. Coal Combustion Residuals**

21 Project expenditures are estimated to be \$1,006,959 or 41.8% lower than projected.

22 The variance is primarily due to lower than forecasted dry bottom ash system
23 maintenance at Plant Scherer. The variance also reflects accounting adjustments

1 booked in March 2022 that are addressed in witness Deaton’s testimony.

2
3 **Project 125. CT NESHAP**

4 The variance is the result of the CT NESHAP as a new project, with estimated 2022
5 expenditures of \$114,000, which was not included in the original projections. As I
6 described in my final true-up testimony, the EPA lifted of the stay on effectiveness
7 of the CT NESHAP for gas-fired units on March 9, 2022 immediately subjecting
8 some of FPL’s CTs to the rule requirements including conducting initial testing and
9 demonstration of compliance by September 5, 2022. The rule also requires annual
10 stack testing of affected units to demonstrate continued compliance with the
11 emission standards.

12
13 **Project 427. General Water Quality**

14 Project expenditures are estimated to be \$247,300 or 15.0% lower than projected.
15 The variance is primarily due to lower projected general water quality expenses as
16 a result of lower projected generation capacity factor at Plant Daniel.

17
18 **Project 430. General Solid & Hazardous Waste**

19 Project expenditures are estimated to be \$105,218 or 11.6% lower than projected.
20 The variance is due to projected costs being moved from this project to Project 23,
21 SPCC – Spill Prevention, Control and Countermeasures.

1 **Project 431. Title V**

2 Project expenditures are estimated to be \$54,442 or 29.7% lower than projected.
3 The variance is primarily due to cost reductions associated with the Gulf Power
4 merger including insourcing legal support for Title V permitting and compliance
5 activities associated with the former Gulf Power's generating facilities.

6

7 **Emissions Allowances**

8 Project expenditures are estimated to be \$6.3 million higher than previously
9 projected. The variance is primarily due to the Gulf Power emissions allowances
10 balance being expensed in March of 2022. FPL's acquisition of Gulf Power
11 Company included Acid Rain Title IV allowances whose costs were recovered
12 under Gulf ECRC Project 27. As a result of the retirement of coal generation at
13 GCEC and the current and planned shutdown of Gulf and FPL's other coal-fired
14 generating units, compliance with the acid rain program requires significantly
15 fewer allowances to be surrendered to the EPA annually than allocated by the EPA
16 each year at zero cost. Nationwide reductions in the emissions of Acid Rain
17 pollutants from electric generating units over the past 20 years has resulted in a
18 large and continually growing bank of emissions allowances reducing to near zero
19 the market value price of those allowances. Prior to the merger, FPL had more than
20 1.7 million allowances at a zero-cost basis. Following the merger, it was
21 determined that the appropriate accounting treatment for the Gulf Acid Rain
22 allowances was to write off the inventory balance and record the allowances at \$0,
23 reflecting their market value.

1

2

Capital Variance Explanations

3

Project 3. Continuous Emission Monitoring Systems

4

Project revenue requirements are estimated to be \$125,023 or 11.6% lower than

5

previously projected. The variance is primarily due to a delay in the transfer of

6

costs from Project 405 for Gulf's Continuous Emissions Monitoring systems to

7

FPL Project 3. The Gulf costs were projected to be transferred to Project 3 in

8

January 2022; however, the transfer transaction was not posted until March 2022.

9

The majority of the Project 3 variance is offset by the variance in Project 405. Other

10

factors contributing to the Project 3 variance include a delay in project completion

11

for the Ft. Myers Energy Center analyzers project with actual costs being lower

12

than projected.

13

14

Project 19. Oil-Filled Equipment and Hazardous Substance Remediation

15

Project revenue requirements are estimated to be \$78,910 or 14.6% lower than

16

previously projected. The variance is primarily due to adjusting the schedule for

17

the Wewa substation groundwater remediation project to allow additional time to

18

complete testing in order to optimize design of the proposed permeable reactive

19

barrier wall.

20

21

Project 27. Lowest Quality Water Source

22

Project revenue requirements are estimated to be \$1,264,707 or 24.4% lower than

23

previously projected. As I explained in my Final True-up testimony filed on April

1 1, 2022, the Smith Reclaimed Water Project was canceled subsequent to the due
2 date for FPL's 2022 projection filing. Accordingly, the amount budgeted for the
3 Smith Reclaimed Water Project was not incurred.

4
5 **Project 42. Turkey Point Cooling Canal Monitoring Plan**

6 Project revenue requirements are estimated to be \$825,968 or 11.1% lower than
7 previously projected. The variance is primarily due to final agency approval of
8 FPL's supplemental salinity management plan as proposed, negating the need for
9 additional infrastructure such as groundwater and disposal wells.

10
11 **Project 50. Steam Electric Effluent Guidelines Revised Rules**

12 Project revenue requirements are estimated to be \$78,916 or 10.5% lower than
13 previously projected. The variance is primarily due to the extension of Plant
14 Scherer's compliance date for Effluent Limitation Guidelines. The original
15 forecast was based on the assumption that Plant Scherer would utilize bio-phys-
16 chem technology in order to be compliant with the Effluent Limitation Guidelines
17 by 2025. However, in October 2021, Georgia Power Company filed its NOPP in
18 the VIP program treatment, which extends the compliance date to 2028. This
19 decision extended the project time horizon and both the amount and the timing of
20 expected cash flows.

21

1 **Project 54. Coal Combustion Residuals**

2 Project revenue requirements are estimated to be \$9,565,010 or 21.1% lower than
3 previously projected. The variance is primarily due to permitting delays at Plant
4 Scherer which has led to a delay in the ash pond closure. In addition, the Plant
5 Smith ash pond closure work order will not be placed in-service until 2023 when
6 Plant Smith completes construction of the project.

7

8 **Project 123. The Protected Species Project**

9 Project expenditures are estimated to be \$163,160 or 87.9% lower than projected.
10 The variance is primarily due to delays in project implementation at Plant Ft.
11 Myers. FPL is working with National Marine Fisheries Service to determine when
12 and which design to implement at the site. Once the design is finalized, costs will
13 be incurred for engineering, permitting, and construction.

14

15 **Project 124. FPL Miami-Dade Clean Water Recovery Center**

16 Project revenue requirements are estimated to be \$1,245,148 or 121.4% higher than
17 previously projected. The variance is primarily due to advancing engineering,
18 procurement, and construction activities into 2022 as a result of receiving permits
19 10 months ahead of schedule. Advancing these activities also helps to mitigate
20 impacts from the supply chain challenge.

21

1 **Project 402. GCEC 5, 6, 7 Precipitator Projects**

2 Project revenue requirements are estimated to be \$1,130,496 or 37.1% higher than
3 previously projected. The variance is primarily due to recovery of amortization on
4 the unrecovered net investment balance of coal capability components of the GCEC
5 that began in January of 2022, pursuant to the Settlement Agreement approved by
6 Order No. PSC-2021-0446-S-EI in Docket No. 20210015-EI, which was not
7 reflected in the projection filing.

8

9 **Project 405. CEMS- Plants GCEC & Daniel**

10 Project revenue requirements are estimated to be \$114,392 or 100% higher than
11 previously projected. The variance is primarily due to a delay in the transfer of
12 Project 405 costs for Gulf's Continuous Emissions Monitoring systems to FPL
13 Project 3. The Gulf costs were projected to be transferred to Project 3 in January
14 2022; however, the transaction was not posted until March 2022. The majority of
15 the Project 405 variance is offset by the variance in Project 3.

16

17 **Project 414. Smith Stormwater Collection System**

18 Project revenue requirements are estimated to be \$56,317 or 37.4% lower than
19 previously projected. The variance is primarily due to the monthly depreciation
20 expense decreasing in January 2022 due to implementation of the depreciation rates
21 approved in the Settlement Agreement, Order No. PSC-2021-0446-S-EI, after the
22 projection filing.

23

1 **Project 419. GCEC FDEP Agreement for Ozone Containment**

2 Project revenue requirements are estimated to be \$2,472,143 or 31.4% higher than
3 previously projected. The variance is primarily due to recovery of amortization on
4 the unrecovered net investment balance of coal capability components of the GCEC
5 that began in January of 2022. The adjustments reflect the Settlement Agreement
6 approved in Order No. PSC-2021-0446-S-EI, after the projection filing.

7

8 **Project 422. Precipitator Upgrades for CAM Compliance**

9 Project revenue requirements are estimated to be \$364,824 or 58.5% higher than
10 previously projected. The variance is primarily due to recovery of amortization on
11 the unrecovered net investment balance of coal capability components of the GCEC
12 that began in January of 2022. The adjustments reflect the Settlement Agreement
13 approved in Order No. PSC-2021-0446-S-EI after the projection filing.

14

15 **Project 427. General Water Quality**

16 Project revenue requirements are estimated to be \$517,911 or 23.5% lower than
17 previously projected. The variance is primarily due to rescheduling completion of
18 the GCEC Closed Ash Landfill project from July 2022 to December 2022.

19

20 **Emissions Allowances**

21 Project revenue requirements are estimated to be \$406,757 or 79.2% lower than
22 previously projected. The variance is primarily due to the Gulf Power emissions
23 allowances balance being expensed in March of 2022 as discussed in the O&M

1 variance explanation section. The lower working capital balance results in a lower
2 than projected revenue requirement.

3 **Q. Does this conclude your testimony?**

4 A. Yes.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF KATHARINE MACGREGOR**

4 **DOCKET NO. 20220007- EI**

5 **AUGUST 26, 2022**

6

7 **Q. Please state your name and address.**

8 A. My name is Katharine MacGregor and my business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

10 **Q. By whom are you employed and in what capacity?**

11 A. I am employed by Florida Power & Light Company (“FPL” or “Company”) as Vice
12 President of Environmental Services.

13 **Q. Have you previously testified in this proceeding?**

14 A. Yes.

15 **Q. What is the purpose of your testimony?**

16 A. The purpose of my testimony is to present to the Commission FPL’s Project
17 Progress Report which provides information regarding the various environmental
18 compliance projects that have been approved, or are pending approval, for cost
19 recovery through the Environmental Cost Recovery Clause.

20 **Q. Have you prepared or caused to be prepared under your supervision, direction
21 and control any exhibits in this proceeding?**

22 A. Yes. Along with FPL witness Deaton, I am co-sponsoring FPL’s Project Progress
23 Report, which is included in Exhibit RBD-4 as Form 42-5P.

1 Q. Does this conclude your testimony?

2 A. Yes.

1 BY MS. MONCADA:

2 Q Ms. MacGregor, are you sponsoring any exhibits
3 to your direct testimony?

4 A I am.

5 Q Ask that Exhibit KM-1, which is also shown as
6 Exhibit 7 on staff's exhibit list?

7 A Yes.

8 MS. MONCADA: Mr. Chairman, I would note that
9 Ms. MacGregor's exhibit has been premarked for
10 identification as No. 7.

11 CHAIRMAN FAY: Okay.

12 BY MS. MONCADA:

13 Q Are you also co-sponsoring any exhibits to
14 your testimony?

15 A I am.

16 Q And would that be your cosponsorship of FPL's
17 project progress report, which is included as Form 42-5P
18 in Exhibit RBD-4, which is also shown as Exhibit 5 on
19 staff's list?

20 A Yes.

21 MS. MONCADA: Mr. Chairman, I would note that
22 Exhibit 5 already has been entered into the record.
23 It was done so earlier today with the admission of
24 Witness Deaton's testimony and exhibits.

25 CHAIRMAN FAY: Okay. Great. Thank you. So

1 we just have seven left?

2 MS. MONCADA: Just seven left.

3 CHAIRMAN FAY: Okay.

4 MS. MONCADA: Thanks.

5 BY MS. MONCADA:

6 **Q Ms. MacGregor, you are aware that, based on**
7 **what happened just moments ago, your live testimony will**
8 **be issued limited to Issue 11?**

9 A Yes.

10 **Q And have you prepared on-the-fly a summary of**
11 **your testimony that is limited to just that one issue?**

12 A On-the-fly I have edited my testimony and I am
13 prepared.

14 **Q Wonderful. Would you please provide your**
15 **summary to the Commission?**

16 A Yes. Thank you. And good morning, Chairman
17 and Commissioners.

18 My summary will cover the portions of the
19 testimony that address FPL's request for approval of a
20 new environmental cost recovery clause project. FPL is
21 requesting Commission approval of a new project, the
22 Combustion Turbine National Emission Standards for
23 Hazardous Air Pollutants Project, or NESHAP Project.

24 On March 9th of this year recall, the U.S.
25 Environmental Protection Agency removed a longstanding

1 stay of a new emission standard for certain new
2 gas-fired turbines that was first promulgated in March
3 of 2004. As a result, FPL is required to demonstrate
4 compliance that all affected facilities meet a
5 formaldehyde emission limit through initial and annual
6 testing. Compliance had to be demonstrated within 180
7 days of the March 9th, 2022, publication date, which was
8 September 5th, 2022.

9 As stated in my prepared testimony, FPL
10 believes that its affected units can meet the NESHAP
11 emission standards, avoiding the need to install
12 pollution control equipment. Should an affected unit
13 not achieve this performance standard, FPL would be
14 required to install pollution control equipment in order
15 to achieve compliance with the federal regulations. At
16 this time, FPL does not anticipate the need to install
17 any control equipment.

18 FPL is not recovering costs associated with
19 the NESHAP project through any other cost recovery
20 mechanism, and the costs are required for compliance
21 with legally mandated environmental regulations.

22 This concludes my summary.

23 **Q Thank you, Ms. MacGregor.**

24 MS. MONCADA: The witness is available for
25 cross-examination.

1 CHAIRMAN FAY: Okay. Great. Thank you.
2 We will start with OPC.

3 MR. REHWINKEL: Thank you, Mr. Chairman.

4 EXAMINATION

5 BY MR. REHWINKEL:

6 Q Good morning, Ms. MacGregor.

7 A Good morning.

8 Q My name is Charles Rehwinkel with the Office
9 of Public Counsel.

10 I would like to ask if, on page three of your
11 April 1st testimony, at lines one through six, is that
12 where you describe, at a high level, the NESHAP program?

13 A Let me get to it. Page three?

14 Q Yes, ma'am.

15 A Line one through six? Yes.

16 Q Okay. And is it true that you are asking the
17 Commission to approve this program -- is it a program or
18 a project? What do you consider it?

19 A It's a project.

20 Q Project. You are asking the Commission to
21 approve this project, and you are the witness supporting
22 that request?

23 A I am.

24 Q Does the project you are seeking approval for
25 encompass the O&M expense for testing that you explain

1 in your testimony, and any capital costs associated with
2 bringing a putative noncompliant combustion turbine unit
3 into compliance with the formaldehyde emission standard?

4 A Yes, it does.

5 Q Okay. On page four, starting at line three,
6 you say: FPL must conduct emission stack testing within
7 180 days of the March 9, 2022, publication date, and is
8 required to demonstrate compliance no later than
9 September 5, 2022. FPL is then required to conduct
10 annual emission testing to demonstrate continued
11 compliance with the NESHAP. Did I read that right?

12 A You did.

13 Q And the expense for the emission testing that
14 you describe there is specifically the cost that you are
15 asking for cost recovery in this docket?

16 A The expense provided is the estimated expense
17 of emission stack testing. Yes.

18 Q And you are asking for cost recovery for that?

19 A We are.

20 Q You started incurring this cost this year
21 before the Commission had a chance to consider and
22 approve the expenditures, is that right?

23 A We did.

24 Q Are you aware whether the Commission has ever
25 disallowed incurred costs -- costs incurred prior to

1 **consideration and approval of a project or a program?**

2 A Can you restate that?

3 Q Yes.

4 Are you aware of whether the Commission has
5 ever disallowed a company's request for cost recovery
6 because they incurred the cost prior to the Commission
7 considering and approving a project?

8 A I am not aware.

9 Q Okay. You have identified 32 units in your
10 fleet where the emission testing will be required, is
11 that right?

12 A Our initial estimate was 32 combustion
13 turbines that were affected.

14 Q Is the -- and then you said two of the units
15 you were in the process of seeking an exemption for?

16 A Ultimately it ended up being six that were --
17 that met the standards under the regulation. So our
18 total units tested successfully within the deadline
19 required was a total of 26 units.

20 Q Okay. So -- and the six that you mentioned,
21 are they definitively exempt from compliance testing?

22 A They are. We were able to demonstrate their
23 construction dates initiating prior to the deadline
24 provided by the Environmental Protection Agency.

25 Q Okay. On page four, you provide testimony

1 about the information provided by vendors regarding
2 EPA-approved methodologies and, based on that
3 information, you have projected an annual compliance
4 cost of \$380,000 for this testing; is that right?

5 A In April, we estimated the cost to be
6 \$380,000, that is correct.

7 Q Has that number changed?

8 A That number has changed.

9 Q Is that because the removal of the six units
10 or something else?

11 A It is for two distinct reasons. It is one --
12 the removal of six units did contribute to the lower
13 costs. So too did our read of the regulation, which
14 requires initial and annual testing. We were able to
15 work with DEP to determine that the initial testing
16 would constitute annual testing and, therefore, we only
17 had to do one test on each of the 26 units that were
18 applicable.

19 Q So is the \$380,000 number different?

20 A Today, it is a total of \$114,000. So it was
21 higher -- the estimate was higher.

22 Q Okay. Is it the company's intention to seek
23 only -- did you say 114?

24 A 114 is what we filed. Yes.

25 Q Is the intention to seek only the 114, or the

1 380 and then true it up next year?

2 A Our intention is, based on our July filing,
3 the estimated true-up was 114,000 for the applicable
4 units under this program.

5 Q And you mentioned DEP. Are they the destinate
6 of the EPA for enforcement of this rule?

7 A They are the delegate.

8 Q Delegate.

9 You would agree, would you not, that staff
10 served, and you answered, discovery about the costs for
11 the annual testing expense on subjects such as the per
12 units cost, the rate impact, the number and location of
13 contractors, mobilization and demobilization rates,
14 which are confidential and I don't want you to disclose,
15 is that right?

16 A I would agree -- I am sorry, I was unclear on
17 the question.

18 Q Okay. You were asked discovery by the staff
19 about the testing expenses and subjects that spored the
20 per unit costs positive of testing, the rate impact
21 costs, the number and location of contractors and the
22 mobilization and demobilization rates of contractors; is
23 that right?

24 A Yes, I would point, yes, to my testimony.

25 Q Okay. And from your testimony, it would

1 appear that you have begun testing, and have had to
2 submit evidence of compliance with the formaldehyde
3 emission standard to the DEP before September 5; is that
4 right?

5 A We, in fact, successfully completed all
6 testing required under the EPA regulations in time by
7 September 5th, and found that all 26 of our units were
8 well below the formaldehyde limit in the regulation.

9 Q Okay. So when you say well below, that would
10 suggest that no unit was on the cusp of being out of
11 compliance?

12 A That's correct. Our results ranged from 51
13 down to as low as 13, I believe.

14 Q Okay. So I think that answers my next
15 question, which is we're -- since we are past that
16 September 5 date, you have not filed any information in
17 the docket, the Commission can assume that you do not
18 have a NESHAP compliance problem with the 26 CTs?

19 A We do not.

20 Q The NESHAP rule is based on the Clean Air Act,
21 right?

22 A That's correct.

23 Q Okay. So cost of compliance with the Clean
24 Air Act is expressly authorized for recovery under the
25 ECR statute, is that your understanding?

1 A That is my understanding.

2 Q So you would agree with my agreement, that
3 there is no dispute in this case about whether that --
4 this project on the expense side is squarely within the
5 realm of the ERC's authorization?

6 A That is my testimony. However, it is the
7 Commission's design to choose to approve or disapprove.

8 Q Okay. Let's go back to your testimony on page
9 four, and I want to go to lines six through 10, if you
10 can.

11 A Sure.

12 Q This is your April 1 testimony.

13 A Yep. There. Got it.

14 Q You testify there: If a combustion turbine
15 unit -- I am sorry, let me start again.

16 If a combustion turbine does not meet the
17 NESHAP, FPL must install pollution control equipment to
18 reduce emissions and conduct emission testing to
19 demonstrate continued compliance with the NESHAP. Based
20 on today's technology, the pollution control equipment
21 would likely be an oxidation catalyst. Did I read that
22 right?

23 A You did.

24 Q Would it be fair to say that you have not
25 provided any testimony in this docket that FPL has had

1 to install such capital -- such equipment and incur a
2 capital cost for any of your CT units as a result of
3 NESHAP?

4 A I can testify right now that FPL has met all
5 emissions requirements set by this regulation. We are
6 well below the 91 parts per billion required in the EPA
7 regulation and, therefore, will not require any
8 oxidation catalyst to be installed on our units.

9 Q Okay. And accordingly, you have not provided
10 the Commission with any cost details for such pollution
11 control equipment, is that right?

12 A That is right.

13 Q You were asked no discovery by staff about
14 capital costs for any potentially noncompliant CTs, is
15 that correct?

16 A Which set of discovery are you referring to?

17 Q I am asking if you were -- were you -- let me
18 ask it again.

19 My question is that staff did not ask you what
20 capital costs would be if you were in a noncompliance
21 situation, did they?

22 A I didn't -- I am not familiar with that in my,
23 no, in discovery.

24 Q Okay. So I get -- my question to you is you
25 don't -- you are not aware of any discovery staff asked

1 you about capital costs for a noncompliance situation?

2 A I am not, and likely due to the fact that we
3 felt all along that our CTs would be in compliance.

4 Q Okay. I had a question for you but I think
5 your testimony changes what I would ask you, which is,
6 it seems clear, from what you have testified, that you
7 do not foresee pollution control equipment being
8 required at any of your CTs due to being noncompliant
9 with the NESHAP, is that right?

10 A That's right.

11 Q Also, I think your testimony says that it is
12 likely, based on today's technology, that any pollution
13 control equipment that would be required would be an
14 oxidation catalyst; is that right?

15 A That's right. And that is also present in the
16 EPA regulation.

17 Q Okay. You have not presented any evidence of
18 changing operations or dispatch characteristics or even
19 retirements of a unit in lieu of installation of
20 pollution control equipment, have you?

21 A We have not, likely because we felt that all
22 of our units would comply with this regulation.

23 Q Okay. Is it possible that if you were faced
24 with a noncompliance, that you would evaluate whether a
25 dispatch scenario could be changed, or an operational

1 characteristics -- characteristic could be changed, or
2 even retirement could be changed based on a
3 cost-effectiveness analysis that might be performed?

4 A Based upon our findings in our review and
5 understanding of our CTs, it would likely be, if that
6 were to ever occur -- which we do not believe it ever
7 will occur -- that we would likely tune the CT to
8 determine and reduce emissions and meet the formaldehyde
9 standard.

10 Q You have also not presented evidence of any
11 potential changes in pollution control technology that
12 might change the compliance solution for a potentially
13 noncompliant CT, have you?

14 A I have not. But I do refer back to the
15 regulation as promulgated, which specifically states
16 that the best known technology is an oxidation catalyst.

17 Q Would you agree with me, that if you -- if, on
18 the, based on your testimony, unlikely event that a CT
19 would be noncompliant, that it would be possible for the
20 company to file a petition and demonstrate that you need
21 to present a compliance solution and ask the Commission
22 to approve that?

23 A I am unclear on the question.

24 Q Okay. That's -- that's a fair response.

25 If you ever found yourself out of compliance,

1 wouldn't the company file a petition, describe the
2 compliance solution, and ask the Commission to approve
3 it sometime in the future when that situation presented
4 itself?

5 A Are you asking if we could, or would be
6 required to? I am struggling with the question.

7 Q Okay. I am asking the could part. Wouldn't
8 it be possible to see if that eventuality happened and
9 then address the compliance solution at that time?

10 A Ultimately, under the rule-making by the
11 Environmental Protection Agency, compliance is
12 mandatory. Regardless of outcomes, we are required to
13 comply with 91 parts per billion on every single stack.
14 We would be required to, in some form or fashion, meet
15 that standard no matter what.

16 What our request today in our testimony is,
17 does this -- asking the Commission to make a
18 determination on eligibility under the Environmental
19 Cost Recovery Clause. However, none of our future --
20 this would not preclude, in any of our future filings on
21 any costs related to this project, the Commission having
22 oversight and review of the prudence and reasonableness
23 of those costs.

24 Q The rule compliance that you refer to in your
25 answer would not necessarily mean that pollution control

1 equipment would have to be installed if you had an
2 operational solution that brought the unit down into
3 within the formaldehyde emission standard, is that
4 right?

5 A That's right. So I refer to tuning, in our
6 ability to tune the machine to better adjust any
7 formaldehyde emissions. But I would remind you that all
8 26 of our units are well below the 91 parts per billion,
9 as required and mandated in this rule.

10 Q Okay. On page five, lines 15 through 16, if
11 you could look at that.

12 You state there: FPL will update its project
13 costs for the proposed projects -- for the proposed
14 project. Do you see that?

15 A Do you mean FPL will update its projected
16 capital costs for this proposed --

17 Q Yes --

18 A Yes.

19 Q -- I misread my own handwriting here.

20 So just read, if you wouldn't mind, better for
21 you to read your testimony on 15 and 16?

22 A Sure. Happy to.

23 MS. MONCADA: Can I get the page and line
24 again? I am sorry.

25 MR. REHWINKEL: It's page five, lines 15

1 through 16.

2 THE WITNESS: Do you want me to start with if
3 that?

4 BY MR. REHWINKEL:

5 Q Yes, please.

6 A If that occurs, FPL will update its projected
7 capital costs for this proposed project.

8 Q Okay. When you say update, does that really
9 mean that you will provide the Commission, in the first
10 instance, capital costs?

11 A Of course we would provide the Commission with
12 capital costs, but we do not estimate capital costs now
13 or in the future.

14 Q Okay. And just to circle around on this.
15 There are no capital costs before the Commission to
16 update other than zero, right?

17 A Right now, yes.

18 Q Okay. Ms. MacGregor, I appreciate your
19 answers. Thank you for your testimony.

20 A I am happy to.

21 MR. REHWINKEL: That's all I have.

22 CHAIRMAN FAY: Great. Thank you.

23 Mr. Moyle?

24 MR. MOYLE: I have just a handful of
25 questions.

1 EXAMINATION

2 BY MR. MOYLE:

3 Q Good morning.

4 A Good morning.

5 Q So when y'all are doing these tests, is it a
6 specific test that is done only looking at this
7 constituent that we have been talking about, or are the
8 tests more like when you go to a doctor and get blood
9 tests, and they look at 10 or 12 things with one test?

10 A That's a great question.

11 Under the rule, we are required to use a
12 specific test method that's outlined by the EPA. And
13 the test in this particular case is required for
14 formaldehyde.

15 Q Okay. And you do testing regularly of
16 environmental issues, do you not? I mean, like daily
17 tests for emissions?

18 A We, in some cases, have continuous emissions
19 monitoring on our stacks.

20 Q All right. And those costs, the continuous
21 emissions monitoring, they are recovered in base rates,
22 correct? Those are part of your operational expenses?

23 A Our SIMS, I believe, is a separate project in
24 this docket under environmental cost recovery.

25 Q The one you are putting before the Commission

1 today?

2 A The one we are putting before the Commission
3 today is separate from SIMS.

4 Q Right. Right. But the continuous
5 environmental monitoring that you do, that's just an
6 operational expense that's recovered, not through the
7 environmental clause, it's recovered through base rates?

8 A Our -- we do have a separate project under the
9 environmental cost recovery clause for SIMS.

10 Q What happens -- what happens if the test is
11 done and it's 95? You said right now your range is 51
12 -- 13 to 51, and 91 is the tipping point. You come back
13 in and you tune -- you tune and try to make adjustments
14 so you don't have to have new capital costs, is that
15 right?

16 A So let me correct that. Our range is 56 to 13
17 right now for separate -- for all of our separate 26
18 units that are applicable.

19 I am sorry, your second question is what if we
20 are 91?

21 Q Over the limit.

22 A So if we are over the limit, which we do not
23 foresee happening on any of our units, but if we were to
24 be over the limit, we would likely test again, just to
25 confirm that the test was -- that there were no issues

1 with the test method. And, yes, then we would tune the
2 CT.

3 Q And that is making adjustments. It's not
4 going out and incurring a significant capital cost?

5 A Not to my knowledge, but this is purely
6 speculative given that we have not had do that.

7 Q Okay. Let's say that all of a sudden the
8 tuning doesn't work and would you have to then go buy a
9 new CT? I mean, the capital costs that would incur --
10 would be incurred, what would that be?

11 A We have some loose estimates on the potential
12 capital costs related to that if we were to have that
13 happen. However, we -- we -- not only did we not
14 foresee this occurring with our CTs, but it did not
15 occur, but we did have some internal discussions about
16 what would happen if that was to occur. It could be any
17 range.

18 So what occurs is, and what's required, if you
19 tune, you don't tune successfully and you are over the
20 limit, then you are looking at the oxidation catalyst
21 that's specified in the regulation. Installation of an
22 oxidation catalyst is no small feat, but it really
23 depends on how the CT is constructed.

24 Some CTs may or may not have what I believe
25 the term -- the terminology is a spool piece to

1 accommodate that oxidation catalyst. If it has that
2 spool piece, the estimate we internally had was it could
3 cost as little as 1.5 million to put that catalyst,
4 oxidation catalyst onto the CT.

5 If it does not have the capacity to install
6 the oxidation catalyst, then we need to take apart the
7 CT, virtually rebuild it and move it so we could have
8 space within the combustion process to install that
9 oxidation catalyst. If that occurs, it could be very
10 expensive. It could be over \$150 million.

11 That's why we were so thrilled that all 26 of
12 our units were well below the 91 parts per billion, and
13 fully compliant with these regulations.

14 **Q You are not here today asking this commission**
15 **to approve a situation where you might have to have a**
16 **capital expenditure of up to \$150 million, are you?**

17 A We are asking --

18 **Q If you could answer yes or no and then**
19 **explain, that would be appreciated?**

20 A Yes and no.

21 This commission -- we are requesting the
22 Commission to make a determination on eligibility for
23 these costs. We have been consistent throughout our
24 filings that we don't foresee any capital costs related
25 to it. Today, we are requesting recovery for the O&M

1 costs associated with the project.

2 Q So are you saying that you are asking the
3 Commission today to just say, hey, whatever it takes.
4 It might be 150 million, it might be 300 million.
5 Whatever that takes to be compliant, you want the
6 Commission today to approve that, even though, as you
7 said, it's loose and they are rough estimates?

8 I mean, isn't it process one that you would
9 come back in later and say, here's what we've done, here
10 are the costs, and seek the Commission to approve those
11 costs at a later point in time, not today?

12 A Well, I would say that throughout my testimony
13 over the course of this year, we've consistently stated
14 that we do not believe we will have any capital costs
15 associated with this project.

16 My understanding of the filings and the work
17 of this commission is that, absolutely, we will share
18 any updates on cost changes, and nothing in approval of
19 this project would eliminate the Commission's continued
20 ability and need to review our costs associated with
21 prudence and reasonableness.

22 Q Right. So it would be more appropriate to
23 look at that at some point in the future, would it not,
24 because it's not a real thing today?

25 A Well, we will continually update the

1 Commission if this project is approved.

2 Q Yeah. And parties to the environmental
3 clause?

4 A I am sorry?

5 Q You would also update the parties to the
6 environmental clause?

7 A Yes.

8 Q Because you -- if I understand it, you said,
9 well, prudence should be determined later if there's an
10 issue to say, well, we spent 150, people like Public
11 Counsel and others could come in and say, you know, that
12 \$1.5 million fix for the oxidation really would have
13 worked if you had done X, Y and Z. I mean, we are not
14 deciding of that today. That would be something that
15 would be decided in the future?

16 A We are asking a decision today on eligibility
17 for to the environmental cost recovery clause of this
18 project.

19 Q Regardless of what those are in the future,
20 with no subsequent Commission review?

21 A Well, I think it's important to remember that
22 this isn't an EPA finalized regulation. We are mandated
23 to comply, no matter what. We must comply, but what we
24 have been saying throughout our testimony and what I can
25 conclusively say the test results of our 26 units are

1 today, is that we are well below the 91 parts per
2 billion and do not anticipate any capital costs related
3 to this project. However, in the future, if that was to
4 occur, you know, we do believe that it would tie
5 directly to our regulatory mandate under the EPA regs to
6 meet their compliance requirements.

7 **Q So you want the Commission to approve that**
8 **today, the future expenditure?**

9 A Right. And our estimated future expenditures
10 are O&M only for stack testing, because all of our
11 stacks are below the 91 parts per billion.

12 **Q But included in that question is capital**
13 **expenses?**

14 A If capital expenses are required, however, we
15 would file our estimated costs with this commission.

16 **Q And there are scores of EPA regulations. I**
17 **mean, this is one that's being singled out, but there is**
18 **how many? There is thousands?**

19 A I --

20 MS. MONCADA: Objection.

21 CHAIRMAN FAY: Mr. Moyle, I understood your
22 previous point. I am not sure where you are going
23 on this.

24 MS. MONCADA: To ask the witness right now --

25 MR. MOYLE: Well, I guess I am just trying to

1 understand --

2 MS. MONCADA: -- how many regulations there
3 are --

4 MR. MOYLE: -- I am sorry.

5 CHAIRMAN FAY: One second, Ms. Moncada.
6 Go ahead, Mr. Moyle.

7 MR. MOYLE: I am trying to understand, you
8 know, is this program getting special treatment
9 through this clause, if they have hundreds or
10 thousands of EPA regulations that are part of their
11 normal operations, then why are they here today
12 asking for Commission approval, it sounds like for
13 future capital costs that may or not be -- may or
14 may not be incurred?

15 CHAIRMAN FAY: Yeah, I think with your
16 expertise, Ms. MacGregor, if you could speak to a
17 comparative project. I mean, obviously, you can't
18 speak to every regulation and every project, but
19 the ones you have knowledge about, I think the
20 question is fair.

21 THE WITNESS: The question being per today's
22 regulation?

23 BY MR. MOYLE:

24 **Q Yeah, just comparatively speaking, I mean, the**
25 **EPA, they are in the business of putting out regulations**

1 **pretty regularly to keep the environment clean, right?**

2 A That's right.

3 CHAIRMAN FAY: The question being is this
4 unique?

5 THE WITNESS: Is this unique? I don't believe
6 this is unique. I have seen a previous approval by
7 this commission for NESHAP earlier this year.

8 I think, you know, this rule came out in March
9 and was finalized in March, and we are required to
10 comply, so that's why we submitted this. That's
11 why we went forward with our stack testing. We are
12 in the habit of complying with federal regulations.

13 BY MR. MOYLE:

14 **Q This rule, with respect to the timing of**
15 **compliance, that was not unique either in terms of, you**
16 **know, typically when they put in place new regulations,**
17 **they say, we want you to comply by a date certain,**
18 **correct?**

19 A I -- yeah. This might -- this rule might be
20 somewhat unique in that it was under a stay for over 17
21 years, and then was finalized this year with 180 days to
22 comply.

23 **Q Just one more quick line of questioning.**

24 **Hasn't FPL operationally looked at getting rid**
25 **of some of their peakers and replacing them with battery**

1 **storage?**

2 A I think it would be fair to say FPL is always
3 reviewing our fleet and looking for efficiencies.

4 Q So are there -- are there plans, if one of
5 these peakers doesn't meet the criteria, would you
6 consider possibly battery backup?

7 A I think if -- again, knowing these particular
8 units, our understanding and my understanding of these
9 units is we would first look to see if tuning could be
10 an acceptable and prudent method to simply reduce the
11 emissions, but this is all speculative given that every
12 single one of our units right now applicable to the rule
13 meets the standard.

14 Q Do you have a recollection of a senior FPL
15 executive making a statement that FPL would never build
16 another peaking unit?

17 A I do not have a recollection of that
18 statement.

19 Q Okay. That's all I have.

20 MR. MOYLE: Thank you?

21 CHAIRMAN FAY: Okay. Ms. Moncada, redirect?

22 MS. MONCADA: No redirect.

23 CHAIRMAN FAY: Okay. With that, Ms. Moncada,
24 I believe we have Exhibit 7.

25 MS. MONCADA: Yes. I would like to move

1 Exhibit 7 into the record, please.

2 CHAIRMAN FAY: Okay. Without objection, show
3 Exhibit 7 moved into the record.

4 (Whereupon, Exhibit No. 7 was received into
5 evidence.)

6 CHAIRMAN FAY: Ms. Moncada, would you like
7 your witness excused?

8 MS. MONCADA: Yes, if we could please excuse
9 Ms. MacGregor.

10 CHAIRMAN FAY: Okay. Great. Thank you, Ms.
11 MacGregor.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 CHAIRMAN FAY: Okay. So Commissioners, we --
15 just to recap, we -- Issue 13 was stipulated
16 already. We have Issue 11.

17 Mr. Imig, let's, I guess, take a look at how
18 we could approach this, and then I believe maybe
19 have a discussion of closing arguments, so go
20 ahead.

21 MR. IMIG: The parties may choose to give
22 closing statements in lieu of briefs. If a closing
23 statement is agreed to by the parties, at the
24 conclusion of the closing statements, the
25 Commission would then determine if a vote will be

1 taken or deferred to a later date.

2 If briefs are selected, they are limited to 40
3 pages due on November 29th, 2022, with a Commission
4 vote before the end of the year on a date yet to be
5 determined.

6 CHAIRMAN FAY: Okay. So then I guess, first,
7 let's just see if the parties, FPL, OPC and FIPUG,
8 would want to do closing statements in lieu of
9 briefs.

10 Mr. Rehwinkel, go ahead.

11 MR. REHWINKEL: From Public Counsel's
12 standpoint, we would be with a brief five- to
13 10-minute ability to collect our thoughts and
14 digest what we heard on the stand, incorporate it
15 into remarks, make a closing argument and allow you
16 to make a bench decision instead of filing a brief.

17 CHAIRMAN FAY: Okay. Mr. Moyle?

18 MR. MOYLE: The process would be that we would
19 -- that FPL would have -- make a closing, and then
20 we would make closings, and then call it a day?

21 CHAIRMAN FAY: Correct. Go in the same order.
22 So FPL make their closing, Mr. Rehwinkel and then
23 you. And I would allow you about 10 minutes just
24 to go ahead and put your thoughts together, because
25 then I think that would serve as an alternative to

1 a brief, and maybe provide some efficiencies on
2 this docket, but you are entitled to do what you
3 feel would be best.

4 MR. MOYLE: Sure. I -- we don't have strong
5 feelings on that process. We are happy to do that
6 if that's the will of the other parties.

7 CHAIRMAN FAY: Okay. Ms. Moncada?

8 MS. MONCADA: I think with a 10-minute break,
9 I think that I would be fine.

10 CHAIRMAN FAY: Okay. Great. Well, let's do
11 that. Let's be back at -- I have 10:51, and we
12 will take up closing arguments with FPL, Mr.
13 Rehwinkel and then Mr. Moyle at that time, and then
14 see if the Commission will make a decision.

15 Thank you.

16 (Brief recess.)

17 CHAIRMAN FAY: All right. And we are going to
18 give our folks just two more minutes to get some IT
19 stuff finalized and then we will start back. So
20 bear with us for about another minute or two.

21 All right. I am going to go ahead and get
22 back started up.

23 Commissioner Passidomo is going to be
24 participating with us virtually just because she's
25 not feeling 100 percent today, so we are going to

1 make sure we have her set up for decision purposes
2 as these upcoming dockets get taken up.

3 And so with that, we did want to make one
4 correction on the 04 record, that the exhibits
5 included 2 through 26, and not 2 through 20.

6 And with that, we will move back into the 07
7 to allow for closing arguments. So we will start
8 with FPL for your closing argument.

9 MR. REHWINKEL: Commissioner, I have agreed to
10 go ahead of Ms. Moncada, if that's okay.

11 CHAIRMAN FAY: That's fine with me. Sure, go
12 ahead, Mr. Rehwinkel.

13 MR. REHWINKEL: Thank you.

14 Commissioners, thank you for accommodating
15 this. I think we are -- that the accommodation is
16 mutual, so I will get right to it.

17 Our position in this docket on this single but
18 important issue is simple, no blank check on
19 completely speculative capital spends should be
20 included within the scope of this project. FPL has
21 proposed to you a new project for ECRC recovery.

22 There was mention of a prior -- of a case that
23 was approved, and I believe the reference was to
24 Tampa Electric Company. If we missed the scope on
25 that approval, then shame on us, but it is also

1 unlikely that the FPL project was proposed based on
2 the TECO decision. You should not compound an
3 error of law just because we missed something.

4 We will not invoke the DEF settlement either
5 in this case that's in this docket because it
6 shouldn't have any bearing given the timing of the
7 filings either. But if you consider one of those,
8 consider them both.

9 This project that FPL proposed is, I think, a
10 garden variety run-of-the-mill environmental
11 compliance project. It is well within the statute,
12 the Commission rule and your precedent. The Public
13 Counsel does not take issue with the statute's
14 applicability to the costs for which FPL is seeking
15 recovery in this docket today, the specific costs.
16 While there may be a timing issue regarding the
17 incurrence of costs and Commission consideration
18 and approval, it appears that the timing of the
19 NESHAP rule becoming final and the window to
20 demonstrate monitoring put FPL in a box, so to
21 speak. So under the circumstances, I agree with
22 Witness MacGregor, this was an unusual rule, and we
23 do not object to the compliance expenses, even
24 though they were spent before we are here today,
25 being approved by the Commission.

1 These monitoring expenses are squarely within
2 the plain language of the statute since they are
3 Clean Air Act compliance costs. Nothing could be
4 more settled. So why are we objecting to FPL's
5 project?

6 The reason is the company is asking you to
7 give peremptory approval to speculative and
8 theoretical capital spending that they characterize
9 with the language of speculation, contingency and
10 qualification.

11 Aside from their vague reference to possibly
12 having to spend capital, and what they describe as,
13 adamantly I might add, as unlikely circumstances of
14 the now 26 covered CTs being out of compliance with
15 the NESHAP standards, the company does not present
16 an actual substantive plan or project for you to
17 review and to consider. At best, the capital costs
18 that might need to be incurred in the future are
19 nothing more than a passing mention of a but one
20 potential solution.

21 Witness MacGregor, as I mentioned, adamantly
22 testified that FPL has no expectation of not being
23 in compliance. We think this is great. They are
24 well below the compliance threshold.

25 You heard they speculated on the type of the

1 pollution control equipment, or that was in the
2 testimony, it would be likely an oxidation
3 catalyst, but that's based on today. Today, they
4 are not out of compliance, and they don't expect to
5 be out of compliance.

6 You heard that FPL provided no costs, much
7 less cost to update, so how does one update a void?
8 You can't.

9 You heard that FPL provided no cost benefit
10 analysis for installation of equipment as opposed
11 to other cost-effective solutions. The evidence
12 that you heard is that the optimal solution would
13 be to tune the unit. Well, we didn't hear what it
14 costs to tune a unit. We don't know if that would
15 be an expense or a capital solution, you shouldn't
16 speculate either.

17 You have heard that FPL -- let me say, there
18 is just no meat on the bone here. And as a matter
19 of law, the Commission should not be approving the
20 prudence of a capital spend of absolutely unknown
21 timing, scope or size. You should only approve the
22 expense element that's before you today. That is
23 the entirety of the scope of the project that we
24 agree you can and should approve.

25 You should not allow the company to quietly

1 fix a potential noncompliant situation in the
2 future, and again, one they are certain today will
3 never occur, and then come back to you and say, we
4 spent so many millions or hundreds of millions of
5 dollars to fix this situation, but way back there
6 in 2022, when you were completely in the dark, you
7 approved that. That would be wrong.

8 Remember, FPL has the burden of proof. It is
9 a tired and worn and largely ignored standard from
10 our standpoint. It is not the Public Counsel that
11 has the burden. It is not your staff's burden to
12 tease out what these costs are, or what the
13 solution might be. It is not your burden. It is
14 FPL's burden. They have left you in the dark with
15 a blindfold on with respect to capital costs.

16 We submit to you that, as a matter of law, you
17 cannot pass judgment on the prudence of any capital
18 spend under these circumstances. You simply must
19 require more than this. This is isn't even the
20 bare minimum.

21 If and when they are faced with a noncompliant
22 CT, they can bring to you the particulars,
23 including whether they considered all options, not
24 just one that would be an automatic pass-through
25 with customers, with an after-the-fact tip of the

1 hat from the Commission as they make compliance or
2 a update filing.

3 The company should not be given an incentive
4 to spend pass-through capital dollars without
5 seeking approval from you first. Please do not
6 allow a blank check for capital spend in this case,
7 but approve the costs that they have brought to you
8 today.

9 Thank you.

10 CHAIRMAN FAY: Great. Thank you, Mr.
11 Rehwinkel.

12 FIPUG or FPL, did y'all speak as the order?

13 MR. MOYLE: No, I prefer to go last.

14 CHAIRMAN FAY: Okay.

15 MS. MONCADA: I prefer to go last as well,
16 with the burden of proof that Mr. Rehwinkel just
17 expounded upon.

18 CHAIRMAN FAY: Okay. So the negotiated order
19 did not include Mr. Moyle. Got you.

20 All right. So the original order was going to
21 be FPL, OPC and FIPUG, and so now that you guys
22 have switched places, I will go to you next and
23 then let Mr. Moyle last, as we had stated
24 originally.

25 Go ahead, Ms. Moncada.

1 MS. MONCADA: Well, it's difficult to know
2 what to respond to on behalf of -- to Mr. Moyle if
3 he hasn't told me what it is, but I will go ahead.

4 CHAIRMAN FAY: I recognize that.

5 MS. MONCADA: Okay.

6 CHAIRMAN FAY: He would make the same
7 argument, but in lieu of beliefs, we accepted
8 closing arguments --

9 MS. MONCADA: Sure.

10 CHAIRMAN FAY: -- and so we will present them
11 as closing arguments, and you are entitled to brief
12 if you don't feel you can do that in a closing
13 argument.

14 MS. MONCADA: I will go forward.

15 CHAIRMAN FAY: Great. Okay. Go ahead. Thank
16 you.

17 MS. MONCADA: Thank you.

18 Based on at least what Mr. Rehwinkel has said,
19 there is no question, so I won't belabor the point
20 about whether the NESHAP regulation gives rise to
21 an appropriate environmental cost recovery project.
22 It is subject of -- it is appropriate under the
23 statute.

24 The statute gives you the right to decide
25 whether a utility's compliance costs are

1 recoverable through ECRC, and your precedent
2 establishes three things that must be shown by the
3 utility in order to qualify for ECRC recovery.
4 That the costs were prudently incurred after April
5 13th, 1993; that the activity is legally required
6 to comply with a governmentally imposed regulation
7 enacted, or was affect was triggered after the
8 company's last test year; and that such costs are
9 not recovered through some other cost recovery
10 mechanism or through base rates. There are no
11 other requirements. And even Mr. Rehwinkel has
12 said, there is not even a dispute, at least from
13 the OPC, about whether the O&M costs are
14 recoverable.

15 There is no separate statutory requirement to
16 come back with a separate petition when capital
17 costs arise. This would be a change in precedent,
18 and neither party has presented any evidence why
19 the Commission should change its policy.

20 And I want to address something very, very
21 clearly. We are not asking for a blank check. We
22 are asking today that the Commission determine that
23 the costs that arise under the project are eligible
24 for recovery under the ECRC if they are prudently
25 approved. There is no preemptory approval of the

1 cost with your -- if you approve our request today.

2 If and when the costs arise, we will be back
3 for a reasonableness and prudence evaluation by
4 this commission. At that time, the intervenors and
5 the Commission can address the costs. They can
6 address the cost-effectiveness. They can ask what
7 other options were available to FPL in order to
8 achieve the compliance. They can make accounting
9 inquiries as to whether those costs were capital or
10 whether the costs were O&M. All of that can be
11 taken up at the time when the costs arise.

12 I will read from the TECO order where you
13 aptly note. It says: We note that the
14 reasonableness and prudence of individual
15 expenditures related to the project will continue
16 to be subject to our review in future ECRC
17 proceedings. FPL today is asking for the same
18 treatment, which is consistent not only with the
19 TECO order approving the project, but with all ECRC
20 approvals.

21 And I will just say that this is -- this
22 argument that is being raised is reminiscent of one
23 that both OPC and FIPUG raised about five years ago
24 in the ECRC proceeding -- I am sorry, in the ECRC
25 docket related to Project 47, which is FPL's Turkey

1 Point Cooling Canal Monitoring project.

2 And there, OPC and FIPUG contended -- well,
3 that just -- I am sorry, give me one second to back
4 up. The project there in 47 began with monitoring
5 requirements from DEP and later, as a result of the
6 monitoring, became subject to remediation
7 requirements that involved installation of well
8 systems and other activities that were considered
9 to be capital expenditures. And OPC and FIPUG
10 contended that those costs were outside the scope
11 of your original approval, saying that that was
12 strictly limited to monitoring impacts.

13 And on page 17 of that order, where you
14 approved that program for us and the costs that we
15 were seeking to recover, the Commission concluded
16 that the intervenors are correct in their argument
17 that the costs for O&M and capital have increased
18 for the monitoring plan. However, we find that an
19 increase in cost itself is not a change in the
20 scope of a project.

21 They go -- you go on, on page 18 of that
22 order, to say, in that -- in that proceeding,
23 Commissioners, the witness for FPL was Michael
24 Sole, and you say: As stated by FPL's Witness
25 Sole, environmental compliance programs evolve

1 based upon infor -- based upon information that
2 determines the next appropriate action.

3 That's exactly what we have here. We have
4 stack testing that is required annually. And the
5 results of the stack testing will dictate what is
6 required next. And what we are seeking today is an
7 approval from you that the costs that arise are
8 eligible for ECRC recovery, but at the time that
9 they arise, you maintain your oversight
10 responsibility over the costs to determine whether
11 they were prudently incurred and whether the costs
12 are reasonable. And for that reason, we ask that
13 you approve FPL's position on Issue 11 today.

14 Thank you.

15 CHAIRMAN FAY: Thank you, Ms. Moncada.

16 Mr. Moyle, you are up.

17 MR. MOYLE: Thank you. And I want to come at
18 this from a slightly different perspective, really
19 kind of stepping back and looking at the regulatory
20 issue before you, and sharing some thoughts on the
21 regulatory compact, and how regulation, as I
22 understand it, works, and there is a couple of
23 things.

24 With respect to ratemaking, I think everyone
25 is familiar, you can't have retroactive ratemaking,

1 where you look and make a decision based on
2 something that was done. The standard for prudence
3 is what a reasonable regulatory manager would do
4 under a similar set of facts and circumstances.

5 And just as you can't have retroactive
6 ratemaking, you shouldn't have prospective
7 ratemaking. And what I heard today, and I think
8 the issue that is before you, and based on some of
9 the testimony that was elicited, is you are being
10 asked, or getting very close to a line where you
11 are being asked to engage in prospective
12 ratemaking, give a preemptive approval of something
13 that, you know, candidly, is not before you today.

14 The courts have a long tradition of only
15 deciding issues that are presented and squarely
16 before courts. They don't get off into other
17 things. And I think what you are being asked to do
18 today gets off into other things.

19 I mean, the witness said, we are good. We got
20 everything under control. We are way under the
21 metrics. We don't need to go in and rebuild these
22 peakers, but they didn't say, we are not asking for
23 approval of that. And pushed on that, the witness
24 said, no. We kind of would like to get that from
25 you and put out a range of between 1.5 million and

1 150 million of capital costs that are not before
2 you.

3 I mean, we don't know what the future holds.
4 We don't know what additional technologies are
5 going to be coming forward. So it seems that OPC
6 and FPL are saying, you know, the core issue before
7 you is should some of these costs for testing be
8 approved? 150 million or 100 -- I am sorry,
9 150,000 or 300,000.

10 So that's a very refined and discrete issue
11 that I would suggest is before you for
12 consideration. I would encourage you not to accept
13 the, I believe, improper invitation to today, say,
14 yeah, we -- as part of this, you can go ahead and
15 do whatever you need to do. I mean, if it's 150
16 million, do the 150 million, and did not -- they
17 did not clearly say that would be subject to a
18 prudence review.

19 So I think that the decision for you all
20 today, and I think we are in a little bit of a
21 unique position because we are making these oral
22 arguments. The order that comes out will be, I
23 think, really important as to your decision. But I
24 would respectfully ask, as you weigh this and
25 consider it, that you make clear that you are not

1 engaging in any kind of advanced determination of
2 costs that are not before you today.

3 And, you know, another policy point is who
4 knows if and when this even happens, this
5 speculation. They don't think it will. But if it
6 did, you know, this commission should not be
7 sitting and making a prudence decision of something
8 that may come before a different commission.

9 Just like the Legislature, one Legislature
10 can't bind future legislatures. The -- this Public
11 Service Commission should not act today to
12 potentially hamstring or constrain a future
13 commission that, if the worst case scenario
14 happens, and they can't get the oxidation and they
15 got to rebuild it, and they are up here with 150
16 million, you know, you have prejudged that based
17 on, really, a dearth of evidence and anything
18 concrete before you today.

19 So we would just ask, you know, make the
20 decision on the facts that are before you today.
21 Don't head down this road of speculation, and don't
22 accept the invitation to act based on future
23 actions that may or may not happen. It's not
24 before you, and we don't think that it is in accord
25 with the regulatory compact. So thank you.

1 CHAIRMAN FAY: Great. Thank you, Mr. Moyle.
2 Commissioners, what I would like do next, Mr.
3 Imig, I don't know if we have technical staff
4 available on this. I have a question or two, and
5 then maybe we were going to -- I would give those
6 folks some time to provide -- staff to provide us
7 with their thoughts on this. So do we have
8 technical folks available to answer any questions
9 at this time or --

10 MR. IMIG: That would be fine.

11 CHAIRMAN FAY: Okay. And who would that be?

12 MR. IMIG: Emily.

13 CHAIRMAN FAY: Ms. Knoblauch.

14 MS. KNOBLAUCH: Yes.

15 CHAIRMAN FAY: Great. Okay. Ms. Knoblauch,
16 so just make sure I get some clarity on what's been
17 presented to us, the dialogue about the prudence,
18 reasonable and prudence analysis that would occur
19 in the future, it's my understanding when those
20 costs were to take place, that -- let's, for
21 example, say that under the hypothetical, there is
22 -- it exceeds the level and there is some expenses
23 made. There seem to be either operating or capital
24 that are spent. But either way, would the utility,
25 at that time, be coming to us in the next recovery

1 clause to demonstrate if that standard is met for
2 recovery, or is that something that, for lack of a
3 better term, can be preapproved.

4 MS. KNOBLAUCH: So you are correct, as far as,
5 like, the first scenario that you outlined. They
6 would have to file, and especially if anything
7 differed from their projection testimony, they
8 would have to justify that. And then we could
9 also, additionally, issue discovery to find out,
10 you know, why the costs either went up or down, but
11 it would be reviewed on an annual base basis.

12 CHAIRMAN FAY: Okay. When Mr. Moyle asked Ms.
13 MacGregor, essentially, would that information have
14 to be submitted to us, I think she basically said
15 that they would continue to provide information to
16 us. So just for clarity, you are saying that
17 information would be provided in a filing for
18 recovery?

19 MS. KNOBLAUCH: Correct. So for each project,
20 they typically give, not only the costs, but also
21 an update. And then we could ask additional
22 questions if we feel like the testimony didn't
23 cover any kind of updates regarding each project.

24 CHAIRMAN FAY: Okay. Great.

25 Commissioners, do you have any other questions

1 or -- Commissioner Clark, you are recognized.

2 COMMISSIONER CLARK: I would tag along to the
3 Chairman's line of questions there. What I
4 understand Mr. Moyle saying, I guess, is a little
5 bit different in regard to -- this is the age old
6 question of, you know, if you allow a certain cost,
7 does that automatically set you up for having to
8 allow costs related to this project in the future?
9 And I see this testing as part of what he is saying
10 here.

11 What I would like staff's confirmation is just
12 a reminder, that just because this cost is allowed
13 does not give any guarantee that a future cost
14 that's related to this charge would be
15 automatically deemed prudent by the Commission. Is
16 that a correct statement?

17 MS. KNOBLAUCH: That is correct. So
18 currently, we are just looking at if the project is
19 eligible to go through the ECRC. So not
20 necessarily a specific cost that they may have in
21 the future.

22 COMMISSIONER CLARK: I think that's what Mr.
23 Moyle was asking, is this commission to go on
24 record saying this does not automatically qualify
25 future projects for cost recovery.

1 MS. KNOBLAUCH: That is correct. Though,
2 again, if the project is required by, you know, a
3 regulation, then they are allowed to recover those
4 costs, but they are, again, reviewed on an annual
5 basis.

6 CHAIRMAN FAY: Okay. Great.

7 Any other questions?

8 With that, I am looking -- it looks like we
9 are at 11:20. What I would like to do is we will
10 break for lunch, but then, Ms. Knoblauch, when we
11 come back, if you could provide the Commission with
12 a general sort of recommendation or understanding
13 of the points that have been presented, and then we
14 can make a determination if we want to defer that
15 and have it brought to us at a later date or make a
16 bench decision today, so --

17 MS. KNOBLAUCH: Absolutely.

18 CHAIRMAN FAY: Is that clear?

19 MS. KNOBLAUCH: Correct. Yes.

20 CHAIRMAN FAY: Okay. Great.

21 With that, we will see everybody back at 1:00,
22 then.

23 Thank you.

24 (Lunch recess.)

25 CHAIRMAN FAY: We are going to be just a few

1 minutes to make sure we got our whole team before
2 we get started. So that's what I am going to do
3 every time we come back. I am going to tell you it
4 will be just a few minutes and then we will get
5 started, so I will let you know here in a few
6 minutes. Thanks.

7 All right. Let's see. Welcome back. We are
8 going to get a recommendation from staff here
9 first.

10 I did want to check and just make sure
11 Commissioner Passidomo is on the line with us,
12 confirm that she's there.

13 COMMISISONER PASSIDOMO: Hey, Mr. Chairman. I
14 am on the line.

15 CHAIRMAN FAY: Great. Thank you.
16 Commissioner Passidomo, we are thinking of you. We
17 hope you feel better.

18 COMMISISONER PASSIDOMO: Thank you.

19 CHAIRMAN FAY: With that, we will move on to
20 staff's recommendation.

21 So, Ms. Knoblauch, when you are ready to
22 present the information go ahead, you are
23 recognized.

24 MS. KNOBLAUCH: Absolutely. Thank you for the
25 wait.

1 CHAIRMAN FAY: Sure.

2 MS. KNOBLAUCH: Issue 11 reads as follows:
3 Should the Commission approve FPL's Combustion
4 Turbine National Emission Standards for Hazardous
5 Air Pollutants Project for cost recovery through
6 the Environmental Cost Recovery Clause?

7 Staff's recommendation is: Yes, FPL's new
8 project meets the Commission's criteria and is
9 eligible for ECRC recovery. This is consistent
10 with Order No. PSC 2022-0286-PAA-EI approving a
11 similar project for TECO and DEF's National
12 Emissions Standards for Hazardous Air Pollutants
13 Project, which the parties reached a Type 2
14 stipulation on in this docket.

15 In addition, FPL testified that its combustion
16 turbines meet the emission standards and will not
17 need to install any capital equipment at this time.

18 Operation and maintenance expenses are
19 projected to be approximately 114,000 for annual
20 testing.

21 In summary, staff recommends that there is
22 sufficient evidence in the record to support
23 approval of the proposed project being eligible for
24 cost recovery through the ECRC.

25 FPL, like all utilities, has the burden of

1 proof to demonstrate that the proposed compliance
2 activities are the most cost-effective alternative
3 available. As discussed earlier, any future
4 project costs will be reviewed by the Commission on
5 an annual basis in the ECRC docket to determine the
6 prudence and reasonableness of costs requested for
7 recovery.

8 Said another way, if the Commission finds this
9 project to be eligible for ECRC today, it does not
10 mean that all future costs associated with this
11 project are preapproved for recovery, nor does it
12 mean that all costs associated with this project
13 will automatically be determined to be prudent in
14 future clause proceedings.

15 CHAIRMAN FAY: Great. Thank you.

16 Commissioners, with that, I definitely have a
17 full understanding at this point of the discussion
18 and the recommendation in front us. I will take
19 any questions for Ms. Knoblauch or our staff, or
20 any discussion at this time.

21 Commissioner Graham, you are recognized.

22 COMMISSIONER GRAHAM: Thank you, Mr. Chair.

23 This is to staff. Just on that last part
24 there, just because we are saying that it's okay or
25 prudent today doesn't mean we have to say it's okay

1 or prudent tomorrow. Does that mean that something
2 substantively has to change between today and
3 tomorrow, or can we just say, forget about what
4 that commission thought, we are now saying that we
5 don't think it's a prudent thing to do?

6 MS. KNOBLAUCH: I think that is at the
7 discretion of the Commission. But if something
8 were to change with the project, again, the utility
9 should have to come in within each annual filing to
10 provide cost estimates, and also they usually
11 provide an update on the specific projects if there
12 is any changes to the -- for example, like this
13 project, they would provide an update. So if they
14 were to incur additional capital costs, they should
15 have to file those costs that they have estimated
16 and explain why they are needed.

17 COMMISSIONER GRAHAM: Mary Anne. She's
18 chomping at the bit over there.

19 CHAIRMAN FAY: Oh, Mary Anne.

20 MS. HELTON: I don't know if I am chomping at
21 the bit, but I just want to make it clear that the
22 utility always has the burden of proof. So any
23 time it comes in for cost recovery, the utility has
24 the burden of proof to show that those costs should
25 be recovered, and I just want to make sure that's

1 clear on the record as well.

2 CHAIRMAN FAY: Okay. Great.

3 Do you have any follow-up, Commissioner
4 Graham?

5 Commissioner La Rosa, you are recognized.

6 COMMISSIONER LA ROSA: Thank you, Chairman.

7 And I really don't mean to beat a little bit
8 of a dead horse, but just to clarify, there is
9 nothing that's going to be limiting us if we want
10 to review this annually as far as discovery or
11 evidence that we may ask for as a commission?

12 MS. KNOBLAUCH: That is correct. So it is
13 reviewed on an annual basis. But again, today, we
14 are kind of just looking at the eligibility of the
15 project, whether it meets the requirements or the
16 criteria for the ECRC. And then, again, if
17 anything additional changed, those costs would be
18 reviewed by the Commission.

19 COMMISSIONER LA ROSA: Thank you.

20 CHAIRMAN FAY: Okay. Commissioners, with
21 that, I will take a motion on this item.

22 COMMISSIONER GRAHAM: Move staff
23 recommendation.

24 CHAIRMAN FAY: Okay.

25 COMMISSIONER CLARK: Second.

1 CHAIRMAN FAY: We have a motion and a second
2 to move staff's recommendation as stated in the
3 record.

4 All that approve say aye.

5 (Chorus of ayes.)

6 CHAIRMAN FAY: None opposed.

7 COMMISISONER PASSIDOMO: Aye.

8 CHAIRMAN FAY: I almost forgot about you,
9 Commissioner Passidomo. We got you, and we've got
10 you on the aye for support, not opposed. Just to
11 be clear, there.

12 COMMISSIONER PASSIDOMO: Yes.

13 CHAIRMAN FAY: All right. With that, we have
14 addressed Issue 11 in this docket. Staff, has
15 everything that they need as far as being able to
16 put the order out for that with that ruling,
17 correct? Okay.

18 With that, then, with the bench decision, we
19 don't have anything else, Mr. Imig, that I have in
20 my notes. Are we good?

21 MR. IMIG: We are good.

22 CHAIRMAN FAY: Okay. With that, we will show
23 Docket 07 adjourned.

24 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

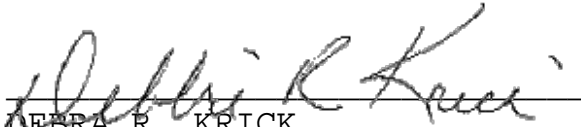
STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 7th day of December, 2022.


DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024